FRONTIERS of REGULATION

Assessing Scholarly Debates & Policy Challenges

Conference Book

The First Conference of the ECPR Standing Group on Regulatory Governance

Centre for the study of Regulated Industries
School of Management, University of Bath

7th-9th September 2006

Centre for the study of Regulated Industries (CRI)

The CRI is a research centre of the University of Bath School of Management. The CRI was founded in 1991 as part of the Chartered Institute of Public Finance and Accountancy (CIPFA). It transferred to the University of Bath School of Management in 1998. It is situated on the 8th floor of Wessex House (North), adjacent to West car park.

The CRI is an interdisciplinary research centre investigating how regulation and competition are working in practice, both in the UK and abroad. It is independent and politically neutral. It aims to produce authoritative, practical contributions to regulatory policy and debate, which are put into the public domain. The CRI focuses on comparative analyses across the regulated industries. CRI activities and outputs include:

- Regulatory statistics, information and analysis
- Discussion papers and Occasional papers
- Regulatory Briefs, Reviews and International series
- Research Reports and Technical papers
- Seminars, courses and conferences

Direct links with regulated industries, the regulators, the academic community and other interested parties are an important feature of the work of the CRI. The CRI is non-profit making. Its activities are supported by a wide range of sponsors.

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Further information about the work of the CRI can be obtained from:-
Peter Vass, Director-CRI, School of Management, University of Bath, Bath, BA2 7AY
or
CRI Administrator, Jan Marchant, Tel: 01225 383197, Fax: 01225 383221,
e-mail: mnsjsm@management.bath.ac.uk
and from the **CRI's web site**, which includes events and the publications list.
http://www.bath.ac.uk/cri/

Publications and publications list can be obtained from Jan Marchant as above.

The ECPR standing group on regulatory governance

The study of regulation and regulatory governance is attracting an increasing attention in the filed of political science. The standing group was founded in March 2005 by David Levi-Faur, University of Haifa and Jacint Jordana, Pompeu Fabra University.

The aim of our group is to provide a platform and infrastructure for encouraging studies in this area and the creation of an institutional arena for mutual interaction and debate. We aim to bring together a broad range of scholars working on (various aspects) of 'regulatory governance' in all parts of the world, including scholars from fields such as law, economics, sociology, criminology, (social) psychology and history for a fruitful exchange of ideas and knowledge on regulatory governance. However, as a Standing Group of the European Consortium for Political Research (ECPR), the main focus of the group will be on the political aspects of regulation. We believe in openness and pluralism and intend to open the group not only for different disciplines but to different theoretical perspective and to variety of methodological approaches.

The types of activities likely to stem from the standing group include conferences, sections and panels at conferences, research sessions, summer schools, a journal and a book series, to ensure productive and sustained engagement among scholars from different disciplinary backgrounds, methodological persuasions, and approaches to the study of regulatory governance.

We also aim to encourage collaboration among scholars and with policy makers on specific projects, facilitate scholarly outputs in the form of book reviews, journal articles, as well as contributions to edited volumes, and the production of high-quality research monographs in the context of the group's own book series (to be created), and providing a framework for mentoring younger scholars and graduate students.

See more on our activities in the group's website:

http://regulation.upf.edu/

There is already established a facilitating communication among scholars in the field of regulatory governance via a electronic list server. We have over 800 scholars

To subscribe visit:

http://list.haifa.ac.il/mailman/admin/regulation

To send notes to the email list use the following address:

regulation@list.haifa.ac.il

FRONTIERS of REGULATION

Assessing Scholarly Debates & Policy Challenges

An international conference organised by the European Consortium for Political Research, Standing Group on Regulatory Governance and the Centre for the study of Regulated Industries, School of Management, University of Bath.

The two-day conference aims to foster scholarly exchange on governance through regulation. We will discuss the new challenges of meeting public interest objectives in the context of the increasing fragmentation of public authority and the varieties of regulatory institutions, mechanisms and processes. We hope that debates will connect to the broad issues, concepts and critiques surrounding the rise of the 'regulatory state' and the global order of 'regulatory capitalism'. While organised by political scientists, we hope to stimulate interdisciplinary debate and welcome participants from disciplines such as economics, law and sociology as well as practitioners.

Optional workshop: Reputation and Regulation: Beyond public and private interest approaches, Saturday September 9th 2006

Conference fee £45 (student fee £35)
Late registration supplement of £20 payable after June 16th 2006
The fee includes conference facilities and light refreshments (tea/coffee/sandwich lunches) but excludes overnight accommodation and main meals.
Workshop fee £30

Academic steering committee

Ian Bartle (convenor, University of Bath)

Jørgen Grønnegaard Christensen (University of Aarhus)

Jacint Jordana (Universitat Pompeu Fabra)

Per Laegreid (University of Bergen)

David Levi-Faur (University of Haifa)

Bronwen Morgan (University of Bristol)

Claudio Radaelli (University of Exeter)

Peter Vass (University of Bath)

Frans van Waarden (Utrecht University)

Conference Programme

Thursday, September 7th, 2006

Time	*Event*		*Location*
08.00 onwards	**Registration**		8W Foyer
09.00 – 09.30	**Plenary**	**Introduction** **Ian Bartle, Peter Vass, David Levi-Faur, Jacint Jordana**	8W2.1
09.30 – 11.00 Session 1	**Panel 1**	**Intellectual property (1): institutions and regulation**	8W2.1
	Panel 2	**Regulating frontier technology: learning from the past**	8W1.28
	Panel 3	**Liberalisation and regulation**	8W3.14
11.00 – 11.30	Break		8W Foyer
11.30 – 13.00 Session 2	**Panel 4**	**Regulation of medicine, health and life sciences**	8W2.1
	Panel 5	**Information society and technologies**	8W1.28
	Panel 6	**Regulatory governance and network industries: developed countries**	8W3.14
13.00 – 14.00	Lunch		8W Foyer
14.00 – 15.00	**Plenary**	**Keynote speaker 1. Peter Freeman,** Chairman, UK Competition Commission, and Chairman of the Regulatory Policy Institute (independent research institute), **"Regulation and Competition - Chalk and Cheese? A view from the Competition Commission"** Chair: **Peter Vass**	8W2.1
15.00 – 16.30 Session 3	**Panel 7**	**Intellectual property (2): the effects of regulating intellectual property**	8W2.1
	Panel 8	**Competition policy**	8W1.28
	Panel 9	**Regulating new technology**	8W3.14
16.30 – 17.00	Break		8W Foyer
17.00 – 18.30 Session 4	**Panel 10**	**Regulatory governance and network industries: developing countries**	8W2.1
	Panel 11	**Regulation, the environment and sustainable development**	8W1.28
	Panel 12	**Corporate governance**	8W3.14

Friday, September 8th, 2006

09.00 – 10.30 Session 5	**Panel 13** **Panel 14** **Panel 15**	**The regulatory state and governance structures** **Better regulation and Regulatory Impact Assessment** **Law, courts and regulation**	8W1.28 8W3.14 8W2.1
10.30 – 11.00	Break		8W Foyer
11.00 – 12.30 Session 6	**Panel 16** **Panel 17** **Panel 18** **Panel 19**	**Regulatory agencies and state reform in Latin America** **Regulatory agencies and delegation (1)** **The regulatory state: national contexts, rationales and models** **Regulation, enforcement and compliance (1)**	8W1.29 8W1.28 8W3.14 8W2.1
12.30 – 13.30	Lunch		8W Foyer
13.30 – 14.30	**Plenary**	**Keynote speaker 2** **Professor Daniel Carpenter**, Professor of Government Harvard University. **"Reputation and the Regulator"** Chair: **David Levi-Faur**	8W2.1
14.30 – 16.00 Session 7	**Panel 20** **Panel 21** **Panel 22** **Panel 23**	**Regulatory agencies and delegation (2)** **Internationalisation of regulation** **EU regulation: compliance, delegation and regulatory networks** **Regulation, enforcement and compliance (2)**	8W2.1 8W1.28 8W1.29 8W3.14
16.00 – 16.30	Break		8W Foyer
16.30 – 18.00	**Plenary**	**Discussion panel:** the frontiers of regulation – unifying themes and future research agendas **Panel members:** Peter Vass, Claudio Radaelli, David Levi-Faur, Frans van Waarden, Jacint Jordana, Jørgen Grønnegaard Christensen	8W2.1

Saturday, September 9th, 2006

<table>
<tr><td colspan="2">Workshop of the ECPR Standing Group on Regulatory Governance
Reputation & Regulation: Beyond Public and Private Interest Approaches

Given by Professor Daniel Carpenter
(Department of Government, Harvard University)

Location: 8W1.28 (Entry pending on pre-registration)</td></tr>
<tr><td>9.30-11.00
Session 1</td><td>Short Introduction
Disease Advocacy, Media Coverage and the Politics of U.S. Drug Approval</td></tr>
<tr><td colspan="2">Break</td></tr>
<tr><td>11.30-13.00
Session 2</td><td>The Other Side of the Gate: Reputation and Post-Market Drug Regulation</td></tr>
<tr><td colspan="2">Lunch</td></tr>
<tr><td>14.00 - 15.30
Session 3</td><td>FDA Pharmaceutical Regulation in a Global Context: Audiences, Comparisons and Dependencies</td></tr>
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Keynote speakers

Peter Freeman became Chairman of the UK's Competition Commission in January 2006. He was appointed a Deputy Chairman in September 2003. Before that he was a solicitor, head of the EC and Competition Law Group of Simmons & Simmons and a leading UK competition law practitioner. He is co-founder and Chairman of the Regulatory Policy Institute, and until 2005 was joint General Editor with Richard Whish of Butterworths' Competition Law.

Daniel Carpenter is Professor and Director of Graduate Studies in the Department of Government, Faculty of Arts and Sciences, Harvard University. He has research interests in bureaucratic politics, health politics, American political development, and stochastic models of behavioral and bounded rationality. He is the author of *The Forging of Bureaucratic Autonomy* (2001), which won multiple awards including the American Political Science Association's Gladys Kammerer prize. He is currently writing *The Gatekeeper: Organizational Reputation and Pharmaceutical Regulation at the FDA*, a book about how organizational reputation animates the world's most powerful regulatory agency. He has received fellowships and awards from the National Science Foundation, the Center for Advanced Study in the Behavioral Sciences, and the Santa Fe Institute. He was a Robert Wood Johnson Scholar in Health Policy at University of Michigan from 1998 to 2000 and currently holds a Robert Wood Johnson Investigator Award in Health Policy from 2004 to 2007. From 2006 to 2009 he will serve as Director for Harvard's Center for American Political Studies.

Conference participants: Thursday 7th September – Friday 8th September 2006

Asli Alici	Kadir Has University, Istanbul, Turkey
Christa Altenstetter	The City University of New York, USA
Ori Arbel-Ganz	Bar Ilan University, Israel
Nathalie Aubry	The Robert Gordon University, Aberdeen, UK
Ian Bartle	University of Bath, UK
Isabelle Bedoyan	Vrije Universiteit Brussels, Belgium
Diana Bowman	Monash University, Australia
John Brady	Anglia Ruskin University, UK
Andreas Busch	University of Oxford, UK
Daniel Carpenter	Harvard University, USA
Peter Carroll	University of Tasmania, Australia
Miguel Castro Coelho	University of Birmingham, UK
David Chandler	University of Warwick, UK
Laura Chaqués Bonafont	University of Barcelona, Spain
George Christou	University of Warwick, UK
Julian Cockbain	Frank B Dehn & Co, Oxford, UK
David Coen	University College London, UK
Edward S Cohen	Westminster College, USA
Marcus Dapp	Federal Institute of Technology, Zurich, Switzerland
Claudia Dias Soares	London School of Economics, UK
Shawn Donnelly	University of Bremen, Germany
Bärbel Dorbeck-Jung	University of Twente, Netherlands
Navroz K Dubash	Jawaharial Nehru University, New Delhi, India
Claire Dunlop	University of Exeter, UK
Burkard Eberlein	York University, Toronto, Canada
Thomas Eimer	FernUniversität Hagen, Germany
Richard Fairchild	University of Bath, UK
Xavier Fernández Marin	Universitat Pompeu Fabra, Barcelona, Spain
Matthias Finger	University of Lausanne, Switzerland
Fabrizio de Francesco	University of Exeter, UK

Peter Freeman	Competition Commission, UK
Oriel Garcia Codina	Universitat Pompeu Fabra, Barcelona, Spain
Esther Gerlach	Cranfield University, UK
Sharon Gilad	London School of Economics, UK
George Gilligan	Monash University, Australia
Avshalom Ginasor	University of Haifa, Israel
Thorvald Gran	University of Bergen, Norway
Justin Greaves	University of Warwick, UK
Jørgen Grønnegaard Christensen	University of Aarhus, Denmark
Daniel Grote	University of Bristol, UK
Paul A Grout	University of Bristol, UK
Debora Halbert	Otterbein College, USA
Frank Halhjem	University of Bergen, Norway
Simon Halliday	University of Strathclyde, UK
Alison Harcourt	University of Exeter, UK
Markus Haverland	Leiden University, Netherlands
Youri Hildebrand	Utrecht University, Netherlands
Graeme Hodge	Monash University, Australia
Jeroen Huisman	University of Bath, UK
Jacint Jordana	Institut Barcelona d'Estudis Internacionals, and Universitat Pompeu Fabra, Spain
Aare Kasemets	University of Tartu, Estonia
Andreas Klinke	King's College London, UK
Devendra Kodwani	Open University Business School, UK
Suzanne Le Mire	Monash University, Australia
Amnon Lehavi	Radzyner School of Law, Israel
David Levi-Faur	University of Haifa, Israel
Karinne Ludlow	Monash University, Australia
Martino Maggetti	University of Lausanne, Switzerland
Yiyuan Mai	Huazong University of Science & Technology, China

Jeanette Mair	Institute of Public Administration, Dublin, Ireland
Moshe Maor	Hebrew University of Jerusalem, Israel
Martin Marcussen	Copenhagen University, Denmark
Duncan Matthews	Queen Mary Intellectual Property Research Institute, UK
Christopher May	Lancaster University, UK
Anne Meuwese	University of Exeter, UK
Assaf Meydani	The Academic College of Tel-Aviv-Yaffo, Israel
Kyung-Jin Min	University of Bath, UK
Frank Mols	University of Exeter, UK
Marc Navarro Vicente	Universitat Pompeu Fabra, Barcelona, Spain
Mari Eike Nilsen	University of Bergen, Norway
Uğur Ŏzgŏker	Kadir Has University, Istanbul, Turkey
Massimiliano Pacifico	University of Turin, Italy
Christine Parker	University of Melbourne, Australia
David Parker	Cranfield University, UK
Luigi Pellizzoni	University of Trieste, Italy
Mark Platt	Confederation of British Industry, London, UK
Colin Provost	University of Oxford, UK
Claudio Radaelli	University of Exeter, UK
Anna Palau Roque	University of Barcelona, Spain
Robert Eli Rosen	University of Miami School of Law, USA
Liora Salter	York University, Toronto, Canada
Paul Sanderson	Anglia Ruskin University, UK
Miguel Salvador Serna	European University Institute, Florence, Italy
David Sancho Royo	Universitat Pompeu Fabra, Barcelona, Spain
Ingrid Schneider	University of Hamburg, Germany
Colin Scott	University College, Dublin, Ireland
Guy Seidman	The Radzyner School of Law, Israel
Ken Shadlen	London School of Economics, UK

Tehilla Shwartz-Altshuler	Bar Ilan University, Israel
Seamus Simpson	Manchester Metropolitan University, UK
Gül Sosay	Bogazici University, Istanbul, Turkey
Adam Spencer	University of Nottingham, UK
George Stavri	The Stanford Institute, Cyprus
Sigrid Sterckx	Universiteit Gent, Belgium
Jure Stojan	University of Oxford, UK
Marc Tenbücken	University of Konstanz, Germany
Arco Timmermans	University of Twente, Netherlands
Rocio Valdivielso del Real	Birkbeck College, London, UK
Frans van Waarden	Utrecht University, Netherlands
Peter Vass	University of Bath, UK
Ian Vickers	Middlesex University, London, UK
Christopher Walker	University of New South Wales, Australia
Stephen Wilks	University of Exeter, UK
Shiu-Fai Wong	City University of Hong Kong
Kutsal Yesilkagit	Utrecht University, Netherlands
Karen Yeung	King’s College London, UK
Marja Ylönen	University of Jyväskylä, Finland
Ania Zalewska	University of Bath, UK

Workshop Participants: Saturday 9th September 2006

Name	Affiliation
Diana Bowman	Monash University, Australia
Laura Chaqués Bonafont	University of Barcelona, Spain
Daniel Carpenter	Harvard University, USA
Julian Cockbain	Frank B Dehn & Co, Oxford, UK
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Sigrid Sterckx	Universiteit Gent, Belgium
Jure Stojan	University of Oxford, UK
Frans van Waarden	Utrecht University, Netherlands
Kutsal Yesilkagit	Utrecht University, Netherlands
Karen Yeung	University of Oxford, UK

Conference panels and papers

Session 1, September 7th 09.30-11.00

Panel 1	**Intellectual property (1): institutions and regulation** Chair: **Ken Shadlen**
Debora Halbert Otterbien College	The World Intellectual Property Organisation: Changing Narratives in IPRs
Christopher May Lancaster University	The World Intellectual Property Organisation and the Development Agenda
Duncan Matthews QMUL	NGOs intellectual property rights and multilateral institutions
Panel 2	**Regulating frontier technology: learning from the past** Chair: **Liora Salter**
George Gilligan & Diana Bowman Monash University	Netting Nano- Regulation at the Frontiers of the Net and Nano
Karinne Ludlow & Diana Bowman Monash University	Nanoparticles: regulating the undefinable
Graeme Hodge & Diana Bowman Monash University	Nanotechnology & the Public Interest: Some Comparative Observations
Panel 3	**Liberalisation and regulation** Chair: **Matthias Finger**
Massimiliano Pacifico University of Turin	Liberalisation of public utilities in Italy
Claudia Dias Soares LSE	Using public finance mechanisms to promote sustainable energy markets in the European Union
Youri Hildebrand & Frans van Waarden Utrecht University	Freer Markets, More Litigation?
David Levi-Faur University of Haifa	Regulation in the Age of Governance: Beyond the Zero-Sum Narratives

Session 2, September 7th 11.30-13.00

Panel 4	**Regulation of medicine, health and life sciences** Chair: **Arco Timmermans**
Adam Spencer Nottingham	Regulation of Animal Health
Justin Greaves University of Warwick	Biopesticides, Regulatory Innovation and the Regulatory State
Jure Stojan University of Oxford	Signalling and the quest for regulation in British complementary medicine.
Moshe Maor The Hebrew University	Organizational Reputations and the Observability of Public Warnings in 10 Pharmaceutical Markets
Panel 5	**Information society and technologies** Chair: **Seamus Simpson**
Alison Harcourt University of Exeter	Committee governance in EU information society policy.
Marcus M. Dapp Federal Institute of Technology (ETH) Zurich	Open Source + Software Patents = Innovation? Understanding software patent policy's effects on open source innovation
Thomas R. Eimer FernUniversität Hagen	Source Code and Ownership. Software Regulation in the US and the EU
Panel 6	**Regulatory governance and network industries: developed countries** Chair: **Burkard Eberlein**
Matthias Finger Swiss Federal Institute of Technology & **Frédéric Varone** Catholic University of Louvain	Governance of network industries: towards European regulators, differentiated regulations, or self-regulation?
Marc Tenbücken University of Konstanz	Regulation of Network Infrastructures in the Enlarged European Union – The Situation After Two Decades of Reform
Daniel Grote University of Bristol	Regulation in the US telecommunication sector and its impact on risk

Session 3, September 7th 15.00-16.30

Panel 7	**Intellectual Property (2): The effects of regulating intellectual property** Chair: **Debora Halbert**
Ken Shadlen LSE	The Politics of Property and the New Politics of Intellectual Property: Insights from Latin America
Ingrid Schneider University of Hamburg	Governance of the European patent system - between self-regulation and legislative governance: The case of the EU Biopatent Directive
Sigrid Sterckx University of Gent & **Julian Cockbain** Frank B Dehn & Co, Oxford	Stem cell patents and morality: The European Patent Office's emerging policy
Mari Nilsen **Frank Halhjem** **Thorvald Gran** University of Bergen	Innovationsystem at micro level: From public medical research to marketable production. The creation of the NorDiag Corporation

Panel 8	**Competition policy** Chair: **Shawn Donnelly**
Paul A. Grout University of Bristol & **Ania Zalewska** University of Bath	Profitability Measures and Competition Law
Stephen Wilks University of Exeter	The Reinvention of UK Competition Policy
Nathalie Aubry The Robert Gordon University	European Merger Control Regulation, when decision-making is policy-making

Panel 9	**Regulating new technology** Chair: **Frans van Waarden**
Bärbel R. Dorbeck-Jung University of Twente	Coping with the complexity, uncertainty and ambiguity of risk problems related to nanotechnologies development – how can public regulation be developed in a process of reflective learning?
Christa Altenstetter The City University of New York	EU regulation of medical devices in comparative perspective
Andreas Busch University of Oxford	The regulation and politics of transborder dataflows

Session 4, September 7th 17.00-18.30

Panel 10	**Regulatory governance and network industries: developing countries** Chair: **David Coen**
Navroz K. Dubash Jawaharlal Nehru University, New Delhi	Emergent Regulatory Governance in India. Comparative Case Studies of Electricity Regulation
Devendra Kodwani Open University Business School, Milton Keynes	Institutional Endowments and Electricity Regulation in India
Yin-Fang Zhang University of Manchester **David Parker** Cranfield University & **Colin Kirkpatrick** University of Manchester	Electricity sector reform in developing countries: an econometric assessment of the effects of privatisation, competition and regulation
Martin Painter City University of Hong Kong	Convergence and Standardization in Telecommunications Regulation: Trajectories of Change in the Asian Regulatory State **(this paper is not being presented at the conference and will be only available on the website)**

Panel 11	**Regulation, the environment and sustainable development** Chair: **Jørgen Grønnegård Christensen**
Luigi Pellizzoni University of Trieste	Public goods, private means. Antinomies of accountability in environmental policy
Marja Ylönen University of Jyväskylä	Moral regulation of water pollution. The case of Finland from the 1960's till 2000
Ian Bartle & **Peter Vass** University of Bath	Independent economic regulation and the policy challenge of sustainable development
Anandajit Goswami **Nilanjan Ghosh &** **Souvik Bhattacharjya** TERI, New Delhi	Optimal Regulatory Instruments for a self – polluting firm in the presence of water pollution **(this paper is not being presented at the conference and will be only available on the website)**

Panel 12	**Corporate governance** Chair: **Edward Cohen**
Rocío Valdivielso del Real Birkbeck College University of London & **Michel Goyer** Warwick Business School, University of Warwick	Corporate Governance and the Transformation of the Electricity Sector in England and Spain: The Interaction between National Institutions and Regulatory Choices
Shawn Donnelly University of Bremen	Regulating the European Corporate Economy
Shiu-Fai Wong City University of Hong Kong	Comparing the Chinese and German Capital Markets: Do Informal Institutions Jeopardize Formal Institutional Supremacy?
Richard Fairchild, University of Bath & **Yiyuan Mai** Huazhong University of Science and Technology, China	The Effect of the Legal System and Empathy in Venture Capital Contracting: Theory and Evidence.

Session 5, September 8th 09.00-10.30

Panel 13	**The regulatory state and governance structures** Chair: **Jeroen Huisman**
Christopher Walker University of New South Wales, Australia	Regulatory Reform in the Australian Rail Sector and the New Interorganisational Complexity. The challenge of balancing economic interests and safety in a complex regulatory environment
Aslı Alıcı & **Ugur Ozgoker** Kadir Has University	Can Financial Regulations Strengthen Financial Stability in Developing Countries? The Case of Turkey
Miguel Castro Coelho University of Birmingham	The Effect of Governance Structure on Education Efficiency: public-private provision and decentralisation

Panel 14	**Better regulation and regulatory impact assessment** Chair: **David Parker**
Claudio Radaelli University of Exeter	Better regulation and the Lisbon agenda
Ian Vickers Middlesex University Business School	Regulation for Enterprise? Recent Reforms and the Implications for Risk Regulation in Smaller Businesses
Anne Meuwese Department of Politics Exeter	Informing the EU legislator through impact assessments: what does it mean in practice?
Peter Carroll University of Tasmania	Regulatory Impact Analysis: promise and reality

Panel 15	**Law, courts and regulation** Chair: **Moshe Maor**
Amnon Lehavi Radzyner School of Law, Herzliya, Israel	Intergovernmental liability rules
Edward S. Cohen Westminster College New Wilmington, PA	From Sources to Impact: Dispute Resolution Systems and Governance in a World of Legal and Regulatory Pluralism
Simon Halliday University of Strathclyde **Colin Scott** University College Dublin	Liability as Regulation
Sharon Gilad London School of Economics	Between Regulation and Dispute resolution -- the Role of the Ombudsman in Regulatory Regimes

Session 6, September 8th 11.00-12.30

Panel 16	**Regulatory agencies and state reform in Latin America** Chair: **Miquel Salvador**
Marc Satorras Foundation for Human Resources Motivation Barcelona **Marc Navarro** Universitat Pompeu Fabra	Institutional setting and the quality of the regulatory policy: Evidence from Telecommunications and Banking sectors in Chile and Peru.
Carles Ramió & **David Sancho,** Universitat Pompeu Fabra, Barcelona **Miquel Salvador** European University Institute, Florence	Regulatory agencies, institutional design and public management: the case of the Dominican Republic
Jacint Jordana UPF and Institut Barcelona d'Estudis Internacionals	Social Regulation and Social Policy in Latin America: a new convergence?
Panel 17	**Regulatory agencies and delegation (1)** Chair: **Ian Bartle**
Martino Maggetti University of Lausanne	Between Control and Autonomy : Implementing Independent Regulatory Agencies
Anna Palau & **Laura Chaqués** Universitat de Barcelona	Delegation to Independent Agencies: a comparative analysis between the food safety and pharmaceutical sector in Britain and Spain
Suzanne Le Mire Monash University	The Embedded Regulator: The Independent Director in the Line of Fire

Panel 18	**The regulatory state: national contexts, rationales and models** Chair: **Claudio Radaelli**
Peter C. Humphreys & **Jeanette Mair** Institute of Public Administration, Ireland	Ireland's complex regulatory landscape
Assaf Meydani The Academic College of Tel-Aviv Yafo	The Regulatory State between Mental Models, Political Entrepreneurs and Electoral Capita: The Case of the Israeli State economy arrangement law
Markus Haverland Universiteit Leiden	National welfare states meet the European regulatory state: The politics of retirement pension regulation
Liora Salter Osgoode Hall Law School	In Search of Needles in the Haystack: The "Public Interest" Rationale of Regulation

Panel 19	**Regulation, enforcement and compliance (1)** Chair: **Peter Carroll**
Paul Sanderson & **John Brady** Anglia Ruskin University, Cambridge	The Inspection Function and Risk Communication within Regulatory Agencies
Tehilla Shwartz-Altshuler Hebrew University and Bar Ilan University & **Ori Arbel-Ganz** Bar Ilan University	The Paradox of Regulator-Firm-Courts' Triangle: Captured Regulators in the Age of Governance
Frans van Waarden Utrecht University	Unintended Effects of a Burgeoning Control Industry
Robert Eli Rosen University of Miami	Who is the Corporate Client? The Compliance Answer

Session 7, September 8th 14.30-16.00

Panel 20	**Regulatory agencies and delegation (2)** Chair: **Markus Haverland**
Isabelle Bédoyan Vrije Universiteit Brussel	Delegation beyond the state: The New Approach standardization as a case of efficient delegation?
Guy I. Seidman The Interdisciplinary Center, Herzliya	Regulating Life, Regulating Death: The Case of Israel's 'Health Basket'
Gül Sosay & **E. Ünal Zenginobuz** Boğaziçi University	Independence and accountability of regulatory agencies in Turkey
Jørgen Grønnegård Christensen University of Aarhus & **Kutsal Yesilkagit** University of Utrecht	Political responsiveness and credibility in regulatory administration

Panel 21	**Internationalisation of regulation** Chair: **David Levi-Faur**
Martin Marcussen Copenhagen University	The Fifth Age of Central Banking in the Global economy
Andreas Klinke King's College London	Democratic Regulation Beyond the State. Deliberative Governance within the North American Great Lakes Regime
Burkard Eberlein York University, Toronto **Steffen Schneider** University of Bremen	A tale of two federations: The Dynamics of Policy Reform in Canada and Germany.
Jacint Jordana Institut Barcelona d'Estudis Internacionals, **David Levi-Faur** University of Haifa & **Xavier Fernandez i Marin** Universitat Pompeu Fabra, Barcelona	The Global Diffusion of the Regulatory Agencies: Institutional Emulation and Channels of Contagion
Panel 22	**EU regulation: compliance, delegation and regulatory networks** Chair: **Christa Altenstetter**
Fabrizio De Francesco **Claudio M. Radaelli** & **Vera E. Troeger** University of Exeter	Convergence and divergence in EU policies for regulatory quality
David Coen UCL, London & **Mark Thatcher** London School of Economics	Governance After Delegation: The Rise of Networks of Regulatory Agencies
Claire A. Dunlop University of Exeter	Epistemic Communities, Relational Distance and the Two Logics of Delegation: Hormone Growth Promoters in the European Union
Panel 23	**Regulation, enforcement and compliance (2)** Chair: **Colin Scott**
George Stavri The Stanford Institute Cyprus	Regulation, Enforcement & Compliance In The Ten New EU Member States: The Case of Cyprus
Frank Mols University of Exeter	Understanding attitudes towards EU rules and regulations in Multi-Level Governance contexts: A social identity perspective
Vibeke Lehmann Nielsen University of Aarhus, & **Christine Parker** University of Melbourne	Will we ever know what is out there? – measuring compliance

Abstracts

Using Public Finance Mechanisms to Promote Sustainable Energy Markets in the European Union

Claudia Dias Soares (London School of Economics)

Public interest values which were once pursued via public ownership are now embodied in the regulation of privatised energy industries. Together with security of supply, 'environmental sustainability' is a touchstone concept in the design of the European Union (EU) energy policy programme. Both goals are especially well served by the development of renewable energy sources. State regulation is indispensable to spur a market shift towards greener sources and public finances play a decisive role in fulfilling this objective.

This paper draws on the contemporary debate on electricity market regulation in the EU with resource to public finance mechanisms to promote a sustainable development path. This kind of public regulatory intervention faces several challenges. On one hand, the regulatory environment in the European Union has undergone significant changes. These concerned the means and terms of public action and the rationale informing public action, *i.e.*, the applicable concept of 'public interest'. On the other hand, some goals brought forward in political programmes enclose potential conflicting rationalities. Achieving the targets set by the EU for renewable energy requires strong public financial intervention, whilst competitive market rules demand careful restriction of state aids.

Careful handle of the current regulatory toolbox is required to conciliate potential conflicting goals within energy policy. Two different regulatory frameworks place particular constraints on EU member States intervention via tax instruments to promote renewable energy sources, namely the one aimed at spinning energy market competition and the one directed at stimulating more sustainable energy consumption. This paper analyses how EU regulation deals with the referred conflict taking as reference point the Directive n. 2003/96/CE, 27.10.2003, on energy taxation, and the Community guidelines on State aid for environmental protection.

Intergovernmental liability rules

Amnon Lehavi (Radzyner School of Law, Interdisciplinary Center Herzliya, Israel)

This article offers an innovative approach to settling disputes about interjurisdictional externalities. Focusing attention on the negative spillover effects of local government zoning decisions on neighboring jurisdictions, the Article develops a monetary compensation regime intended to enrich the currently limited spectrum of intergovernmental legal remedies. This new

liability rule scheme is intended to promote regional efficiency in land use decisions, without wholly upsetting local government regulatory powers. To achieve this aim in a way that is both normatively desirable and administratively feasible, the Article suggests that the parties to the litigation would be the respective local governments, and the remediable damages - the time-fixed loss of public revenues resulting from the expected cross-border adverse effects of the new land use. Hence, for example, a local government would be entitled to compensation for a decrease in its property tax revenues following the devaluation of properties in its territory due to the expected environmental spillovers of a newly approved land use across the border.

As this Article shows, the focus on public revenues may often serve as an effective proxy for evaluating the entire set of public and private marginal effects of the land use decision, making the proposed legal regime a reliable mechanism to promote overall social welfare without resorting to a costly full-scale litigation involving private parties. In addition, the liability rule framework reveals the potential for a monetary internalization of cross-border positive spillovers, and offers a fresh basis for addressing a wide array of intergovernmental conflicts and dilemmas beyond the context of land use regulation.

From Sources to Impact: Contracts, Dispute Resolution Systems and Governance in a World of Legal and Regulatory Pluralism.

Edward S. Cohen (Westminster College)

The significance of law and legal institutions in global regulatory capitalism is widely recognized, but not well understood. To this point, most of the work of legal scholars and social scientists has focused on the sources of the legal regimes governing global commerce, and on the unique structure of law in a transnational context. In this paper, I propose a framework for analyzing the impact of law on the operations of global markets and businesses. The framework attempts to clarify the varying ways in which (and degrees to which) different legal regimes – public and private, national and international – actually shape the practices of global business. I place particular emphasis on the ways in which different systems of commercial dispute resolution – national court systems, arbitration (between businesses and between businesses and states), international panels (such as the World Trade Organization's Dispute Resolution Body), industry associations, and business-NGO agreements – mediate the impact of legal rules and norms on the global economy. Such a framework, I suggest, can help advance the study of how regulation actually shapes capitalism in a globalized economy.

EU Regulation of Medical Devices and Pharmaceuticals in Comparative Perspective

Christa Altenstetter (CUNY Graduate Center of The City University of New York)

The pharmaceutical and medical device regulatory regime share the same EU involvement in setting rules on market access, international trade and competitiveness. Yet, there are significant differences concerning regulatory details. The proposed paper will compare similarities and differences in stringency of regulating pharmaceuticals and medical devices, and explore the balance that has been struck between competing regulatory objectives in the European Union: trade and/or public health. Are these similarities and differences the result of the differences in timing at the start of regulation in each sector? Or is the divergence related to the respective powers of the stakeholders which control the relevant EU and national 'regulatory space'? Do pre-EU political and institutional traditions unique to each regulatory regime explain the differences? Should variations in stringency be anticipated as a result of some fundamental differences in the nature of drugs and medical devices? Finally, does the interface of pharmaceuticals and medical devices with national health protection schemes matter, how, and why? To explore these issues the paper will focus on three specific dimensions of regulatory policy: (i) *pre-market controls* (the regulatory requirements for getting products approved and licensed for sale on the market (ii) *post-market controls* (understood as manufacturers' obligation to operate a system for obtaining feedback from the market place and (iii) *medical vigilance* (understood as the obligation to report serious incidents to the competent authority), that is quasi autonomous regulatory agencies in the EU member states. I will by means of this comparison in this paper show that a better understanding of EU regulatory policy of pharmaceuticals and medical devices is theoretically and empirically significant.

Governance of network industries: towards European regulators, differentiated regulations, or self-regulation?

Matthias Finger (Swiss Federal Institute of Technology) & **Frédéric Varone** (Catholic University of Louvain)

The purpose of this paper is to identify the key characteristics of the emerging modes of governing the European network industries. With Giandomenico Majone (1990, 1996), we make the case that a *European model of network industry regulation* has developed since the liberalization of the telecommunications industry; yet we go further than Majone by taking explicitly into account the *technical systems* underlying both the liberalization and the regulation of the network industries. At present, regulatory practice in Europe covers both the functions of regulation (i.e., the different aspects that are being regulated – e.g., competition, market creation, technical aspects and, political

aspects) and the institutions of regulation (generally a more or less independent regulatory agency).

However, these practices – and their underlying model – appear to be increasingly at odds with the technical and systemic evolution of the network industries. Thus, we argue that the future European model of network industry regulation will have to be the result of the *co-evolution between the technical systems on the one hand and their institutional governance on the other*. As a matter of fact, "*bringing technical system back in*", as we have argued elsewhere, will pose substantial challenges to the current practices and underlying model of network industry regulation in Europe (Finger and Varone 2006). Therefore, we suggest that at least three diverging policy options (or scenarios) are thinkable in the near future: the top-down creation of sector-specific *regulators at the European level*, the bottom-up emergence of *differentiated regulations* (either at a regional level or across customers' categories) or the devolution of new regulatory powers to major market players (e.g., *self-regulation* by transnational multi-utilities). Furthermore, these three alternative scenarios can be assessed against the ideal-typical systems of governance which have been recently proposed by several scholars of multilevel governance (e.g., Hooghe and Marks 2003, Skelcher 2005).

In Search of Needles in the Haystack: The "Public Interest" Rationale of Regulation

Liora Salter (Osgoode Hall Law School)

Only the broadest definition of regulation can set the full agenda for regulatory research. One such definition is: "attempts to steer behavior towards public interest goals." This kind of definition incorporates questions about state involvement (whose attempts?), regulatory approach and mechanisms (which kind of attempts?) and regulatory compliance and enforcement (how successful are or can these attempts be?). It raises the questions about whose behavior is of interest, that is, the market, corporations, the state itself or individuals (whose behavior is being regulated, and which behaviors?). But most importantly, it separates regulation from corporate or market responses that are "regulatory" but not instances of regulation, by pointing to the different purposes of regulation. This kind of definition leads us to ask why regulation is instituted in the first place, and what might be the actual standard, that is, "the public interest", against which on-going regulation is actually being measured.

Interestingly, although most of the questions connected to regulation have been well canvassed, the issue of the public interest rationale for regulation has not. There are good reasons: "Public interest" means one thing in everyday conversation, another in the by-play of negotiations and discourse that characterizes regulation in practice, another thing yet as a "term of art" in law, and it has even more meanings in the public and legislative debates leading up to regulation.

This paper faces up to the difficult problems connected to the public interest rationale for regulation. Having argued elsewhere that studies of regulation should be sector and nation specific, it examines the public interest rationales of the several regulatory authorities that deal with a single sector, communications, in one country, Canada.

The paper will argue that, if public interest (or its many synonyms) is the stated and legal rationale for regulation, the purpose of regulation is often not what it purports to be. The actual standards against which regulation is measured are likely different from the standards that members of the public or even we analysts apply whenever we inquire whether the public interest is being served, for example, in safety or cultural regulation. If Julia Black is right that regulation is best understood as a conversation, public interest serves as a terminological pivot point, directing regulators to pay attention to something other than plain language meanings of the term, "public" and "public interest". By examining the public interest provisions of several regulators, all operating in the same sector and country, it may be possible to see where the actual focus of regulatory attention might be, and thus what purposes regulation might well be actually intended to serve. Doing so might also indicate some of the reasons why regulation continues to be chosen as a governing instrument, despite its bad press and all its many failings.

The Effect of Governance Structure on Education Efficiency: public-private provision and decentralisation

Miguel Castro Coelho (Institute of Local Government Studies, School of Public policy, The University of Birmingham)

This paper investigates the effect of the governance structure of primary and secondary education systems on their productive efficiency. We use stochastic frontier analysis to estimate efficiency for 18 OECD countries in 2000 and 2003. Governance structure is explored through two analytical components: the share of public/private providers in the system and the degree of decentralisation of public providers. The share of public providers is found to exert a negative effect on efficiency whereas the degree of decentralisation of public providers is found to exert a positive effect on efficiency.

Signalling and the Quest for Regulation in British Complementary Medicine

Jure Stojan (St Antony's College, University of Oxford)

Regulation seeking is a central interest of regulatory economics. This paper addresses the issue from an economic historical perspective, considering the regulation of British osteopaths and chiropractors. The study of regulatory motivation requires more precise research questions: 'Why was a particular form of regulation sought at the time?' It is suggested that the osteopaths' early campaign for regulation during the 1920s and '30s did not have the objective of obtaining statutory regulation. Rather, it was instrumental in uniting various factions of qualified practitioners and moreover, used as a signalling device. The renewed osteopathic interest in statutory regulation in the 1980s is interpreted as a function of the changing effectiveness of market signalling. Accordingly, the problem of whether or not to regulate is analysed as a function of its economic context. Both complementary professions operate within the medical market characterised by asymmetrical information and their regulation can be thus understood as the control of market signals. The Osteopaths' choice of self-regulation is treated as a signal in its own right, being a part of the integrated 'signal mix'. This included upper class patronage, fashionable addresses of osteopathic practices, self-imposed restrictions on advertising, and the 'cosmetics of professionalisation'—signals imitating those of the medical profession. Osteopaths continuously relied on upper class patronage, a common signalling device within the medical market. 'Cosmetics of professionalisation' was an inexpensive signal, used by high and by low quality competitors alike. Subsequently, its usage was curbed with successful legal actions by the medical profession. The signal of legislative attention acquired in the 1930s sufficiently strengthened the qualified osteopaths' 'signalling mix' so that they felt able to eschew statutory regulation up to the 1980s.

Regulation of Animal Health

Adam Spencer (University Park, Nottingham)

United Kingdom animal health policy is in a process of major overhaul with a raft of new policies emerging from the, itself, recently created Department for the Environment, Food and Rural Affairs (Defra). The new institutional and policy architecture followed a number of animal health related policy problems of which Bovine Spongiform Encephalopathy (BSE) is the most familiar, but also salmonella in eggs and, most recently, Foot and Mouth Disease (FMD). These episodes served to highlight problems in the policy making process in UK animal health and, worryingly for government, are widely held to have led to a decline in public trust in government use of

science in policy. The new institutions and policies are part of a government response to that loss of public trust. One element of this strategy has been to make policy making and scientific expertise more open and transparent. This reflects a broader trend towards a more 'democratic' use of science (see for example *Science and Public policy*, Special Issue June 2003).

The paper considers two recent animal health policies, the Animal Health and Welfare Strategy (2004) and the Government strategic framework for the sustainable control of bovine tuberculosis (bTB) in Great Britain (2005). It examines how animal health policy has developed in the light of earlier problems and the role of science in the framing and implementation of policy. It shows how the policies seek to utilize natural and social science in the reframing of policy to focus more on the protection of human health and the avoidance of large economic burdens to the taxpayer. Furthermore, these new policies seek to place a greater emphasis of responsibility upon the farming industry itself for its own welfare. Governance arrangements for each policy have created structures in which the relationships between science, policy makers and stakeholders are organised.

Committee Governance in EU Information Society Policy

Alison Harcourt (Department of Politics, University of Exeter)

The European Union's "Information Society" (infosoc) policy is an umbrella framework that includes telecommunications, audiovisual (broadcast and radio) and "eEurope" policies (Broadband, eBusiness, eGovernment, eHealth, eInclusion, eLearning and Security). The number of formal bodies and committees on which experts sit in 'information society policy' is high – at some 75 committees operating within the European Commission alone. There is no doubt that the experts who sit on these bodies have a large role to play in the policy process and implementation of EU regulation. The 'information society' is a policy of high political salience. Its agenda is dynamic and involves a wide range experts drawing from both technical and civil society expertise. As such, the policy provides an interesting case for the study of committee governance. The academic literature presents two opposing views of committee governance. Some authors argue that the EU's system of committee governance is opaque, undemocratic, undermining the role of the European Parliament and distorting representation in the EU. Others argue that committee governance is representative, rational and promises alternative forms of democracy (or deliberative democracy) and thereby promotes greater European Union. This paper shall shed some light into this debate through the study of committee governance in this policy area. It will firstly map out the formal and informal EU bodies in which experts interact. It will then attempt to observe where policy recommendations are flowing from and now consensus is formed. This is

particularly interesting in a policy area which claims to attribute strongly to the promotion of democracy and civil society in Europe.

Better Regulation and the Lisbon Agenda

Claudio Radaelli (Department of Politics, University of Exeter)

This article assesses the congruence between the initiatives for regulatory reform known as 'better regulation' and the recently re-formulated 'growth and jobs' Lisbon agenda of the European Union. To do that, better regulation is re-conceptualised as meta-regulation - sets of rules on the process of rule-formulation, adoption, implementation, and evaluation. Meta-regulation has both structural and discursive properties. Better regulation discourse has been re-defined over the years. Its malleability has enabled policy-makers to address different objectives and to push for their shifting regulatory reform agendas. This explains how the better regulation pendulum has been able to swing between regulatory quantity (or de-regulation) and quality across time and even across the same country. In terms of structural properties, there is diversity across time and countries on fundamental issues such as the dominant stakeholders and the contents of regulatory impact assessment. 'Better regulation' has been re-defined by the Barroso Commission to fit in with the 'growth and jobs' priorities of Lisbon. This re-definition, however, has also narrowed the scope, the range of stakeholders, and the ambitions in terms of governance and regulatory legitimacy. Diversity, proliferation of objectives and better regulation rhetoric make the relationship between meta-regulation, the Lisbon agenda, and, looking at the long-term impact, the dynamics of the regulatory state problematic. The quality-quantity divide and the role played by credibility and regulatory legitimacy are critical for the development of meta-regulation and its impact on the regulatory state.

Netting Nano- Regulation at the Frontiers of the Net and Nano

George Gilligan (Faculty of Business and Economics and the Monash Centre for Regulatory Studies, Monash University) & **Diana Bowman** (Monash Centre for Regulatory Studies, Faculty of Law, Monash University)

The rapid progression of the Internet has impacted dramatically on contemporary society, transforming communications, business and trade. However, the global nature of the Internet has challenged traditional models of regulation. What has emerged is a new international framework, governed by an increasing number of actors and regulatory processes. This paper draws on the regulatory experience of the internet in an examination of regulatory developments concerning another fast-growing sector, nanotechnology.

The rapid advancement and the potential broad applications of nanotechnologies suggest that this heterogenous family of technologies will create their own set of policy and regulatory challenges, including legal issues of liability and intellectual property protection. As occurred with the Internet, there are growing concerns about the potential social and economic impacts of nanotechnology. This has already resulted in an increasing number of state and non-state actors paying increasing attention to its development, commercialisation and governance.

The paper maps how governance of the Internet has emerged, evaluates the forces that configured the regulatory framework for the Internet, especially its international contexts. The paper concludes that as with the regulatory framework that has evolved with the Internet, nanotechnology will be regulated by a combination of market and government regulatory models, within both the international and national spheres.

Liberalisation of public utilities in Italy

Massimiliano Pacifico (Political Science Department, University of Turin)

What is the point of liberalising public utilities? And how far has the liberalisation process gone in Italy? The paper will illustrate the reasons why liberalisation of such services is thought to be advantageous for consumers, and will describe the main steps in a process that is still under way and thus not yet complete. The first section is dedicated to the fundamental principles regulating the provision of services of general economic interest throughout Europe, while the second part will describe the highpoints that have characterised the process of assimilating European regulations into the Italian context.

The Italian pathway has been a very mixed one: for national services (telecommunications, electricity, gas) significant reform processes have begun that are substantially consistent with European principles. As an example, the case of energy will be described; this is a service that is undergoing gradual opening to the market, slowly reducing the income of the previous national monopolist.

On the contrary, for local services (local transport, water and environmental services) European trends have been virtually disregarded: thanks to exceptions granted by the Italian parliament, local authorities have been able to continue employing management models of the past, which are effectively in contrast with the European plan. In other words, local authorities still operate in a monopolistic regime, through the companies that they own, thanks to extensions that have allowed them to continue in-house providing, and have indefinitely postponed the principle of competition. This approach is clearly shown in the almost complete lack of competitive procedures for the attribution of services on a local scale. The final part of the paper is thus

dedicated to determining some of the reasons that may explain the light and dark areas of the process of implementing the European policy.

The World Intellectual Property Organisation: Changing Narratives in IPRs

Debora Halbert (Otterbien College)

In this paper the narratives deployed during negotiations and the everyday practices of the WIPO, including the manner in which policy advise is framed, are examined critically to develop a historically contextualised account of the manner in which the WIPO deploys language (and changes in language) to reinforce the norm as (as regards IPRs) that the organisation supports.

The World Intellectual Property Organisation and the Development Agenda

Christopher May (Lancaster University)

In this paper the current political debates at the WIPO relating to the proposed 'development agenda' are set out and contextualised. Central to the proposal for the WIPO DA is the need to make the link to the United Nations (of which the WIPO is a specialised agency) actually mean something. Thus, at the centre of the WIPO DA is an engagement with the hitherto accepted mission of the organisation to 'promote' IPRs. The paper discusses the main components of the WIPO DA and the discussion to date regarding their adoption and modification by the WIPO.

NGOs intellectual property rights and multilateral institutions

Duncan Matthews (Queen Mary University of London)

This paper draws on initial work on Non-Governmental Organisations (NGOs) Intellectual Property Rights and Multilateral Institutions Research Project which aims to identify patterns in recent NGO activity at the World Trade Organisation (WTO); the World Intellectual Property Organisation (WIPO); the World Health Organisation (WHO); the Convention on Biological Diversity (CBD) Conference of the Parties; and the Food and Agriculture Organisation (FAO) of the United Nations. The paper takes an initial look at both public health/access to medicines issues, and agricultural, genetic and traditional knowledge issues, as a way of examining the impact of NGOs on the debates around these important issues in the contemporary political economy of IPRs.

Stem cell patents and morality: The European Patent Office's emerging policy

Sigrid Sterckx (University of Gent, Belgium) & **Julian Cockbain**, (Frank B Dehn & Co, Oxford)

The Biotechnology Directive (Council Directive 98/44/EC) of the European Union, which has been folded into the operating rules of the European Patent Office, has specified that "so as to respect the fundamental principles safeguarding the dignity and integrity of the person" commercial uses of human embryos (e.g. the production of hES cells) shall not be patentable. In contrast, an EC report in 2002 (COM(2002) 545 final) stressed that the granting of patents could/should play the role of encouraging research in the field of human stem cells. In the United States, on 9 August 2001, President Bush forbade use of Federal funds to support research on hES cells established after that date, and yet the US has granted patents covering hES cells (see US Patent No. 6200806). This paper investigates the ethical foundation of the approaches adopted by the US and European Patent Offices to such matters in a selection of cases.

The Politics of Property and the New Politics of Intellectual Property: Insights from Latin America

Ken Shadlen (London School of Economics)

Insights from Latin America I analyze the processes whereby developing countries reform their systems for granting and protecting intellectual property (IP), with a focus on four Latin American cases. I examine political conflicts over of IP as a particular type within the broader set of conflicts over how states and societies manage property and ownership more generally. I explore how emerging international regulations and pressures - from international organizations, key trading partners, and foreign investors - interact with the changing interests of domestic actors in the area of IP, and in doing so unleash new (and unexpected) patterns of political mobilization and alliance creation. I examine how these subsequent patterns of political mobilization and alliance formation lead to the creation of new IP regimes. The project, thus, explains why, in the context of a global sea-change in governance in IP, we continue to witness divergent national policies and practices.

Between Control and Autonomy: Implementing Independent Regulatory Agencies

Martino Maggetti (University of Lausanne)

Political decision-makers, when delegating competencies to independent regulatory agencies (IRAs), are always concerned by the following dilemma: independence must be effective so as to improve the credibility of the agency and foster the quality of regulatory outputs; but it should not consent an uncontrolled self-government of agencies, in order to avoid an undesirable rerouting of the strategic aims of delegation. How to find a middle way between control and autonomy of IRAs

becomes therefore a major puzzle for the viability of the global order of regulatory capitalism (Levi-Faur 2005; Levi-Faur and Jordana 2005). In this context, some evidence exists showing that the implementation of agencies may produce unanticipated consequences (Wilks and Bartle 2002). Hence it becomes crucial to determine if the formal independence, as prescribed in the statutes of the agency, is properly implemented, and explain the possible variation. To do this, in this paper I will present a way to conceptualise and assess the de facto independence of IRAs. Moreover, I will discuss the expected deviation of agencies from their statuary independence, drawing from the relevant literature on: life cycles of agencies (Martimort 1999): path dependence (Pierson 2000); varieties of capitalism (Hall and Soskice 2001). Finally, I will test the related hypothesis with a cross-national comparison between a number of West European regulators.

Regulatory Reform in the Australian Rail Sector and the New Interorganisational Complexity. The Challenge of Balancing Economic Interests and Safety in a Complex Regulatory Environment.

Christopher Walker (School of Social Science and Policy, University of New South Wales, Australia)

This paper examines the recent history of reform in the Australian rail sector and looks at the emerging complexity of regulatory and organisational arrangements for rail within the state of New South Wales. Since the 1990s, with the adoption of National Competition Policy by all governments in Australia, there has been a sustained effort to reform the efficiency of the rail sector. Changes in organisational arrangements have involved the vertical separation of functional units into new entities, the corporatisation of services, the privatisation of services and assets, the contracting out of key operations and in some jurisdictions, the establishment of new rail regulatory agencies.

An examination of regulatory and organisation reform in the Australian rail sector highlights the growing complexity of 'inter-organisational governance'. As the state moves to contract out and establish purchase provider relationships the regulatory function becomes one of governance, managing complex forms of inter-group relations (Steane, P. & Carroll, P. 2001). The influence of structural reform and the establishment of new regulatory authorities have added further layers to the Australian rail policy process. Both regulators and policy makers have had to skill up to deal with the changing complexity of the policy and institutional environment. This paper will argue that complexity is now a major challenge for government agencies and key stakeholders as they work to navigate, influence and participate in the rail policy process. Ironically, after 15 years of reform aimed at improving operational efficiency, Governments have

now interpreted the regulatory complexity of the sector as an impediment to economic activity and at its February 2006 meeting the Council of Australian Governments (COAG) committed to a new national reform agenda which includes a focus on simplifying rail regulatory regimes (COAG consists of the Prime Minister, Premiers and Chief Ministers of each State and Territory. They generally meet twice a year to consider policy issues of national significance. COAG was instrumental in progressing National Competition Policy reforms during the 1990s).

This paper aims to address whether reform in the Australian rail sector has diminished the states capacity to govern and examines whether reform has been a process of deregulation, re-regulation or regulation for competition. The paper then looks at the outcomes of regulatory reform efforts and analyses some of the implications raised for governments and key stakeholders.

Can Financial Regulations Strengthen Financial Stability in Developing Countries? : The Case of Turkey

Aslı Alıcı (Kadir Has University, Economics Dept. Istanbul, Turkey) & **Ugur Ozgoker** (Kadir Has University, International Relations Dept., Istanbul, Turkey)

The type of prudential regulations commonly used in developing economies aims directly to control of financial aggregates, such as liquidity expansion and credit growth, namely capital requirements with risk categories used in industrial countries. The results achieved in the last two decades have clearly indicated, contrary to policy intentions, the very limited usefulness of those policies in helping those countries to contain the risks involved with more liberalized financial systems; especially in episodes of sudden reversal of capital flows.

In the case of Turkey, the new liberal economic policy began to be implemented in January 1980, which aimed at integration with world markets by establishing a free market economy. As a reflection of this policy, the 1980s witnessed continuous legal, structural and institutional changes and developments in the Turkish banking sector. During these years, Turkey experienced two very severe financial crisis one in early 1994 and the other one in early 2001. In mid-1994, Turkey adopted an IMF based stand-by agreement, and managed to calm the severe economic crises. However, macroeconomic instability continued until the late 1990s. In December 1999, Turkey signed a three-year standby agreement with IMF. This program had failed due mainly to a major banking sector crisis and Turkey has started another stabilization program backed by IMF which is still being implemented in Turkey. With this new program, an extensive streamlining plan, Banking Sector Restructuring Program was started and announced to the public in May 2001.

The aim of this paper is to evaluate the effectiveness of financial regulations adopted in Turkey in achieving financial stability throughout the liberalization process. In this framework, in the light of developments in the Turkish economy the recommendations of the Basel Committee in

terms of liquidity and capital requirements are assessed, especially in controlling the adverse impact of volatile short run capital flows on the financial systems of developing countries.

Liability as Regulation

Simon Halliday (University of Strathclyde) & **Colin Scott** (University College Dublin)

This paper offers a theoretical analysis of the role of liability, broadly defined to encompass all mechanisms under which a service user may seek redress and compensation, as a mechanism of regulation over public service providers. The paper takes up longstanding claims in North American literature that legal liability might serve an ombudsman role in the public sector or act as a form of regulation, claims which have only recently been supplemented by empirical investigation. The paper seeks first to offer a range of definitions of liability, focusing on the relations between service providers and users, the variety of mechanisms of complaint available, the modes through which complaints may be resolved, and the bindingness of resolutions to such complaints (issues of liability). Whilst liability in tort/delict has great prominence in domains such as health and roads, other mechanisms such as internal review, complaints to grievance handlers, such as ombudsman, and judicial review can also be significant. The paper then proceeds to examine the potential impact of different forms of liability on public service providers. We consider problems of diffusion of responsibility within organisations and examine the conditions under which implications of liability may be transmitted to those at the front line in decision making about and provision of public services, and the various organisational responses to the risks associated with liability in its various forms. A key aspect of the regulatory impact of regimes of liability is likely to arise from the enrolment of third parties such as insurance companies, professional and other networks and professional advisers in defining and managing risks. The paper concludes with an evaluation of the normative implications of dependence on the often sporadic interventions of liability regimes as one dimension of the contemporary regulatory state.

Institutional Endowments and Electricity Regulation in India

Devendra Kodwani (Open University Business School, Milton Keynes)

In 1991 Indian government launched systemic economic reforms programme. The infrastructure industries such as telecommunications and electricity have subsequently been restructured and opened to private sector participation. Accompanied with the restructuring and privatisation has been setting up of independent regulatory agencies for telecommunications and electricity. While there is a single Telecom Regulatory Authority of India (TRAI) for whole country the electricity regulatory system in India is central and provincial. In addition to Central Electricity Regulatory Commission there are 18 other provincial (state level) State Electricity Regulatory Commissions

(SERCs) that have been set up by the local (state) governments to regulate electricity markets, encourage competition and private investment. This is due to the federal nature of government in India and also because Indian constitution lists electricity in Concurrent List, meaning both the federal and state level governments are authorised to frame policies regarding electricity supply industry except for nuclear power which is in domain of only federal government. Although most of the government owned state electricity boards are now unbundled and corporatised there is little or no privatisation and the private sector investment in generation and distribution has been very little. A major cause for this could be lack of effective regulatory arrangements.

This paper will examine the Indian electricity regulatory developments from an institutional economics perspective following Levy and Spiller (1994) and Stern and Holder (1999) framework to analyse the regulatory systems. While discussion will encompass issues at national level, a case study of a particular state Gujarat will be provided to map the regulatory developments in context of the institutional endowments and see whether that could explain the limited success of regulatory system in achieving the expected outcomes namely effective economic regulation and encouraging competition in the segments where it is possible. The analytical framework used in this study is expected to lay foundation for a bigger study encompassing all the state regulatory commissions at a later stage.

Nanoparticles: Regulating the Undefinable

Karinne Ludlow (Faculty of Law, Monash University) & **Diana Bowman** (Faculty of Law, Monash University)

Successful commercialisation of nanotechnology requires certainty regarding relevant regulation and liability. Uncertainty as to the law is detrimental to both regulators and industry. Regulators can better influence industry where the law is clear. For industry, uncertainty creates problems: it can be difficult to obtain insurance and adequate capitalisation when potentially overwhelming liability is anticipated. Finally, for regulators and industry, clarification of relevant law provides a better basis for deciding whether existing or proposed regulatory schemes are appropriate.

Despite this need for legal certainty, understanding of both the potential for workplace harm and the law's response to such harm is inadequate in the area of nanotechnology. Nanoparticle production is occurring in Australia. Some, such as environmental groups, assuming that the current law is inadequate, have gone so far as to call for a moratorium. In May 2006, an Australian Senate inquiry into workplace exposure to toxic dust including nanoparticles concluded that 'a responsive regulatory system will be imperative as workers are exposed to new hazards through emerging technologies such as nanotechnology'.

This paper considers how nanoparticles in the workplace will challenge Australia's existing regulatory framework. It identifies that one of the most significant challenges will be defining nanoparticles. Whilst regulatory regimes often need to respond to new technologies where the risks of the technology are unknown, nanoparticles also raise the challenge of defining a technology before it can be measured. This paper discusses how this problem arises regarding nanoparticles. It then draws on the problems arising from defining and measuring 'genetically modified' to consider the legal implications for the nanotechnology industry. This analysis will be important for the Australian nano-industry, with broader implications for other legal systems. It concludes that complex policy decisions regarding the definition of the technology are best determined by the legislature in light of society's best interests.

Public goods, private means. Antinomies of accountability in environmental policy

Luigi Pellizzoni (Department of Human Sciences, University of Trieste)

The paper addresses accountability as classical problem of political modernity that becomes today particularly troublesome. Full accountability is possible only between identical subjects; but then it is a self-referential exercise with no actual purpose and content. To be fruitful accountability must circumvent self-reference and address alterity, open itself to unexpected questions, unforeseen claims.

The antinomy of accountability surfaces in new governance arrangements. Private actors expand their public role by means of contracts or single-handed obligations. Their growing engagement in the policy making by means of contracts and single-handed obligations calls for an increase in controls. However the logic of contract is intrinsically circular, self-referential, preventing any account to and for whatever lies outside the world produced by the contract itself.

This issue is addressed by focusing on third generation (neither command-and-control nor market-based) environmental policy instruments. Widely adopted in Europe as well as elsewhere, they include a variety of solutions based on joint public-private agreements, voluntary schemes and self-regulation. Overall these approaches seem to endorse two assumptions: that environmental protection, sustainability, human health and well-being are better ensured by turning to private means, promoting 'beyond compliance' corporate behaviour and building on the direct interaction of private actors; that *de iure* or *de facto* empowering of the latter is consistent with a strengthening rather than a relaxation of democracy, with the market or other sub-political arenas being the place where democracy is (to be) increasingly practised.

Evaluation of third generation regulatory instruments, however, is quite controversial. High expectations and praises are confronted with complaints about their weak legitimacy, effectiveness, efficiency and equity. I argue that such complaints can be traced to a systematic

inability of contractual arrangements to address public (i.e. third-party) issues and claims. There is, in other words, a mismatch between the emerging use conditions of environmental goods, as the result of social and technical change, and the connection between users and their actual publics. Is there a way out of the deadlock of contractualization? I have no ready made answers. In the last section, however, some possible evolutionary paths of regulation will be outlined.

The Paradox of Regulator-Firm-Courts' Triangle: Captured Regulators in the Age of Governance

Tehilla Shwartz-Altshuler (The School of Public Policy, Hebrew University of Jerusalem and Bar Ilan University) & **Ori Arbel-Ganz** (Bar Ilan University)

The article raises a possible paradox in the inter-relationship of regulators, the regulated firms and the courts in the "age of governance", with respect to "captured regulator" theory.

"Capture theory" inverses the common normative theory of regulation, which is the public interest theory (i.e. Badwin & Cave, 1999). Stigler's work claimed that regulatory decisions mainly represent the private sector's interests and benefits since regulators are captured by the regulated firms (Stigler, 1971; Peltzman, 1976). Since then, the theory has been tested in various fields of regulation such as fishing (Berck and Costello, 2001), banking (Heinemann and Schuler, 2004), environmental regulation (Boyer and Porrini, 2004) etc.

The development of the "age of governance" (i.e. Jordana & Levi-Faur, 2003), carries with it the hollowing of the state (Stoker, 1998) and its withdrawal from production functions while empowering the role of regulatory policy (Hogwood, 1998), therefore demanding new governance patterns and models of policy making (Rhodes, 1994; Milward & Provan, 2000; Sbragia, 2000; Stoker, 1998; Hirst, 2000; House, & McGrath, 2004). Cooperation of regulators and the heads of the regulated firms are seen as one of its features (i.e. Jordana & Levi-Faur, 2003, Palast et Al., 2003). Considering Stigler's work, this raises a theoretical question of the influence this cooperation has on the regulator's perceptions and behavior.

Therefore, the first question this article draws concerns the paradigm which influences regulators when they design regulatory policy. The second question concerns the paradigm which guides the courts when they perform judicial review over regulatory decisions.

Our first hypothesis is that one of the characters of the governance age is close relations which exist between regulators and the regulated firms. Those relations derive from close work methods as well as potential revolving doors between the public and private sectors. This causes the regulator to adopt a pro-market paradigm at the expense of a pro-public one.

The second hypothesis is that the courts are not aware of the consequences of the governance age and especially its possible contribution to the development of the regulator's pro-market paradigm. The courts hold pro-public paradigms, while limiting the power of the

regulatory agencies, which they grasp as administrative authorities that ought to be restricted. By doing that the courts are strengthen the regulated sector which they see as private citizens deserve protection from the administrative authorities.

Therefore, the article reveals a paradox within the triangle of regulator-firms-courts. The courts preserve a de-jure pro-market paradigm but support de-facto the process in which the regulator continues making decisions which strengthen the regulated sector over the regulator itself, as well as the public and the consumers.

On the basis of the theoretical framework and discussion we will qualitatively analyze a test case of regulatory policy in Israel -- a situation of expiration of concession in the gas distillation market. We will demonstrate that in this case the interests of the firms were preferred over the public interest, and the regulator's leading paradigm was pro-market. We will also demonstrate that the judicial decision in this case expresses a lack of adaptation by the Israeli administrative law to the age of governance, especially to one of its characters which is the proximity of regulators and the regulated sector.

Nanotechnology & the Public Interest: Some Comparative Observations

Graeme Hodge (Centre for Regulatory Studies, Faculty of Law, Monash University)
& **Diana Bowman** (Centre for Regulatory Studies, Faculty of Law, Monash University)

This paper examines the future of nanotechnology in the context of the public interest. It notes that whilst governments invested $US4.6 billion in 2004, the public presently understands neither the implications of nanotechnology nor how it might be best governed.

The paper firstly defines the notion of 'the public interest' and discusses how in general terms the public interest is served. It articulates public institutions and arrangements relevant to nanotechnology policy, and reflects on the challenges it poses to public policy frameworks.

Secondly, we examine a range of components guarding the public interest in Australia, Germany, the United Kingdom and the United States. These issues and concerns are drawn from matters being raised by citizens, interest groups, governments and industry in relation to the production and commercialisation of nanotechnology products. Commonalities and differences are discussed, and key issues facing governments are outlined

Thirdly, this paper maps a range of activities occurring within these jurisdictions to explore current public interest activities underway in relation to nanotechnology. In doing so, the paper articulates various approaches to addressing public interest matters. It argues that open and transparent policy deliberations in conjunction with extensive public discourse will be pivotal to protecting the public interest, and to gaining public trust and acceptance of nanotechnologies.

The paper concludes that while governing emerging technologies in the public interest is not a new concept, the concerns currently being raised by 'nano-pessimists' and by nanotechnology itself do present real additional challenges. Moreover, governments continue to act as both a promoter of nanotechnology (given its economic promise), and the guardian of the public interest (given its risks). Looking at the collective concerns raised by stakeholders, it is suggested that a stronger and clearer framework for protecting the public interest and guaranteeing a range of independent accountabilities with nanotechnology is now required.

Delegation to Independent Agencies: a comparative analysis between the food safety and pharmaceutical sector in Britain and Spain

Anna Palau Roque & **Laura Chaqués Bonafont** (Political Science Department, Universitat de Barcelona)

This paper analyses patterns of delegation to regulatory agencies in the food safety and pharmaceutical sector in two European countries –Britain and Spain— in order to explain: (1) why do governments delegate their political power to regulatory agencies in both sectors; (2) at what extend regulatory reforms led to the adoption of similar organizational structures in terms of regulatory competencies and degree of delegation. Delegation is partly explained by principal agent theories and international policy transfers but functional explanations and mimetic processes are unable to give a full explanation of why delegation occurs in particular policy subsystems in some countries but not in other. A close analysis reveals that there is an important degree of delegation in the pharmaceutical sector in both countries, while in the food safety policy subsystem delegation only occurs in Britain but not in Spain.

This paper argues that policy legacies and previous state structures are important to explain different patterns of delegation. In Spain, the distribution of competencies among central authorities and different levels of government in food safety does not allow delegation of powers to an independent regulatory agency. Similar institutional constraints does not exist in the pharmaceutical sector neither in the food safety policy subsystem in Britain, where the delegation process is also promoted by broader state reforms including the proliferation of agency type organizations within public administration reform programmes.

The Embedded Regulator: The Independent Director in the Line of Fire

Suzanne Le Mire (Faculty of Law, Monash University)

The independent director is promoted as a monitor of management in large publicly traded corporations. Their inclusion has become a feature of governance regimes in Australia, the UK and the US. This paper will briefly describe the reforms that have advocated the independent director as the solution to corporate governance problems and the methods used to promote them. The analysis reveals the independent director as an outsider inserted, like the embedded journalist, into a close knit structure. With echoes of the 'embed' program, the reforms which promote the independent director are redolent of governmental interference. As the limitations of 'command and control' regulation have become understood, the state has experimented with other forms of regulation in their quest to improve corporate governance. The independent director can be seen as part of this movement. The changes to the composition of the corporate board are an intervention in the structure and process within the corporation. The paper argues that this is a subtle form of enforced self-regulation implemented through soft law. It is undertaken by non-state or decentred means under pressure by the state. The second part of the paper considers the effectiveness of independent directors in their role as internal regulators of management. The role suggested for the independent director reveals the tension between two differing public interests. That is, the interest in a strong corporate sector and the interest in controlling the ability of corporations to adversely impact sections of the community. There is anecdotal evidence which casts doubt on the ability of the independent director to advance these interests and the empirical studies are mixed at best. The paper will canvas some of the difficulties independent directors may face and what contribution they can make to the governance of the corporation.

Ireland's complex regulatory landscape

Peter C. Humphreys & **Jeanette Mair** (Research Division, Institute of Public Administration)

Policy Context: As in many European countries, 'regulatory reform/better regulation' is one of the key strands of the current Irish public service modernisation programme (http://www.bettergov.ie/). While the early focus was mainly on administrative simplification and the accessibility of legislation ('reducing red tape'), the stimulus for change has been greatly accelerated by the findings of the OECD Report (2001), Regulatory Reform in Ireland. In response to this Report, the Government published its White Paper, Regulating Better (2004), in which six principles of Better Regulation were identified: namely "necessity, effectiveness, proportionality, transparency, accountability and consistency. Regulating Better (2004) also estimates that "there

are over 500 public agencies/bodies in Ireland, many of which have a regulatory function – either as a 'rule-maker' or 'rule-enforcer', at national and sub-national levels.

For a geographically compact country with a population of 4 million, the institutional/functional diversity of the regulatory landscape is complex and poorly understood. Not surprisingly, the Government is committed to ensuring that the potential for fragmentation and duplication is minimised. Such fragmentation and overlap is horizontal in terms of the scope of coverage of regulatory functions across the sectors. There is also vertical fragmentation or overlap in terms of the accountability chain and precise reporting arrangements in place.

Drawing upon relevant national and international literature on regulatory reform, this paper will report for the first time, the findings of a major study to map Ireland's current and evolving regulatory framework as a contribution to evidence-based policy making in this important area. It will be empirical in nature and practically orientated in approach. It will draw for its data upon published and unpublished secondary sources, together with original survey and case-study material from a small number of Irish regulatory agencies. In addition to sectoral analysis of economic and non-economic regulation, it is intended to examine the role of regulating bodies from the view of the regulated within the administrative and institutional context. The implications of these findings for policy development will be discussed.

Coping with the complexity, uncertainty and ambiguity of risk problems related to nanotechnologies development – how can public regulation be developed in a process of reflective learning?

B.R. Dorbeck-Jung (University of Twente)

Quite recently national and European regulators became aware of the big challenges of the emerging converging technologies. In 2004 the European Commission funded several workshops and research projects on benefits, risks, ethical, legal and social aspects of nanotechnology (Nanoforum, 2004; EC, 2004). Regarding the governance of these technologies legislators are confronted with various uncertainties. A major problem is that there is much speculation, but hardly any certainty about the nature of this particular technological development. Referring to similar cases (i.e. the asbestos case and drug disasters) scientists expect that nanotechnology will have immense effects on our health, environment and constitutional freedoms (Hamm a.o., 2004; Mehta, 2002). However, there is also much uncertainty regarding the impact nanotechnology will have on human rights and values. Does this mean that the legislator is condemned to a laissez faire approach? According to the precautionary principle the EU adopted in 2000, scientific uncertainty is no reason for regulatory inaction if there might be immense adverse effects (Hamm a.o., 2004). Regarding the potential hazards and risks of nanotechnology legislative action is required to

protect human rights, as well as to facilitate scientific and technological development (Dorbeck-Jung & Oude Vrielink-Van Heffen, 2005).

In my contribution to this conference I will explore a regulation approach that aims at coping with the uncertainties of nanotechnological development. I will discuss a research project I am developing in cooperation with leading scholars of Constructive Technology Assessment. In this project public governance of nanotechnology is inspired by the idea of reflexive co-evolution (Rip, 2004; 2005). This means that legislation is based on a process of mutual learning in which legislative actors, scientists and societal actors are shaping technological development in continuous interaction. In this approach legal rules and instruments evolve in interaction with particular social rules. In my paper I will describe the knowledge and insights the learning legislator might gain in such a co-evolutionary process. In this context important information concerns a potential irreversibility of technological development (path dependencies), as well the social rules through which technologies are shaped in practice (de facto governance). In a second step the 'legal input' into this learning process will be discussed. Special attention will be paid to the learning potential of certain legislative instruments, as well as to the innovative potential of de facto governance ('soft law'). Finally I will draw conclusions regarding the co-evolution of public regulation coping with technological uncertainties.

Biopesticides, regulatory innovation and the regulatory state

Justin Greaves (Department of Politics and International Studies, University of Warwick)

This paper looks at regulatory innovation in the area of pesticides. It considers, in particular, how the Pesticides Safety Directorate (PSD) can be encouraged to innovate, especially in the area of biopesticides. It uses material from a Rural Economy and Land Use (RELU) funded research project being undertaken at the University of Warwick by a research team led by Professor Wyn Grant. The first section of the paper considers various aspects of regulatory theory: for example, the work of Weber, Moran's model of the regulatory state, and the literature on regulatory innovation (such as the work of Downs). The second section outlines the research project being undertaken at Warwick. It summarises our objectives, gives the background to the project, and considers why there has been a poor uptake of biopesticides in Britain. The final section of the paper links the theoretical perspectives more closely to our work. Moran considers regulation to be a key activity in the contemporary state which means that our work has a broader significance. The key link, however, is with the regulatory innovation literature. The paper separates out analytically the exogenous and endogenous pressures for change, bearing in mind the emphasis in the regulatory change literature on champions that can overcome inertia. It considers how the

executive has intervened in order to promote more use of biopesticides and how pressure is also being exerted within PSD. It also looks at the role played by the Royal Commission on Environmental Protection (RCEP) report on the effect of crop spraying on the public (published in September 2005), and systematic reviews of provision, such as the Hampton Review on UK Regulation (which reported in April 2005).

Who is the Corporate Client? The Compliance Answer

Robert Eli Rosen (School of Law, University of Miami)

In making decisions about their compliance with the law, corporations are constrained not only by their internal processes and external contacts, but also by the individuals who makes decisions on behalf of the corporation and their understanding of whose (or what) interests the corporation should serve. Compliance officials' understandings of the interests the corporation serves will frame and influence their calculation of the value, benefits and costs of compliance activities. Corporate cultures regarding risk and compliance, in turn, therefore contain not only instrumental and adaptive elements, but also latent identities. This paper uses data from Nielsen and Parker's survey of the officials responsible for compliance in 999 large Australian businesses to examine (1) in whose interests compliance officials see corporate compliance decisions as being directed; and (2) how this affects corporations' compliance cultures and activities.

Independence and accountability of Regulatory Agencies in Turkey

Gül Sosay (Department of Political Science and International Relations, Boğaziçi University**) &**
E. Ünal Zenginobuz (Department of Economics, Boğaziçi University)

Independent regulatory agencies (IRAs) are governmental entities that are granted to exercise a certain amount of public authority separate from that of other legislative and executive bodies, but that are neither directly elected by the people, nor directly managed by elected officials. Hence, ensuring their accountability in democratic regimes that are based on the principles of majoritarianism and electoral accountability emerges as a significant theoretical and practical question. According to Caiden, “to be accountable is to answer for one’s responsibilities, to report, to explain, to give reasons, to respond, to assume obligations, to render a reckoning, and to submit to an outside or external judgment.” (1988: 25). The key questions to be derived from this definition include: “who is accountable”(e.g. corporate bodies or individuals, public or private actors), “to whom”(e.g. parliament, executive, courts, other bodies of appeals, consumers) “for what”(e.g. financial matters, fairness, equality, legality, administrative performance), and “how”(i.e. procedures of control).

Although there is a growing literature on the accountability of IRAs in economically advanced countries and the European Union, accountability of IRAs in emerging economies has not yet drawn sufficient scholarly attention. As an effort to address this gap, this paper focuses on and evaluates the accountability of eight IRAs that operate in economic sectors (competition, banking, capital markets, public procurement, telecommunications, energy, sugar, tobacco, tobacco products and alcoholic beverages) in Turkey. After building an accountability framework based on the aforementioned questions, the paper first examines the formal accountability of these IRAs as provided by democratically enacted laws or statutes. Subsequently, based on face-to-face interviews with independent regulators and representatives of regulated sectors as well as secondary resources analyzing the implementation of rlated legal frameworks, the paper aims to explore if, how, and why discrepancies exist between the requirements of formal accountability provided by laws or statutes and their implementation. As such, this study constitutes the first stage of a longer-term project that aims to develop a new accountability index that can be used to measure both formal and informal accountability and that can be employed to compare and contrast degrees and forms of accountability across IRAs in different national and supranational contexts.

The Reinvention of UK Competition Policy

Stephen Wilks (University of Exeter**)**

The paper will focus on the comprehensive redesign and enhancement of the UK competition policy regime since Labour came to power in 1997. The legislative context is the Competition Act 1998 and the Enterprise Act 2002 which between them have transformed the principles, the institutions and the accountability of the UK competition regime. In particular the regime has been depoliticised with ministerial influence removed in favour of the operation of independent agencies. This is a move on the micro-economic sphere analogous to the independence of the Bank of England in the macro-economic sphere.

The paper will evaluate the operation of the new institutions, the reformed OFT, the CC and the CAT. The degree to which they have interpreted and exploited their independent status will be evaluated. The impact on business will be explored and comparative parallels will be drawn with the European experience (especially the Competition Act) and the US experience (here the Enterprise Act with an explicitly US inspiration, eg. on the criminal cartel offence).

The paper will set the change in the context of New Labour's economic policy and the historically, and economically unique experiment in using competition policy to drive improvements in

productivity. The recent productivity work of Nick Bloom and colleagues at the Centre for Economic Performance will be draw in.

The analysis will move in to a more theoretical vein to explore the juridification of the economic realm represented by the embedding of competition law. The analysis of Teubner and Frankfurt School-type analysis will be employed to speculate as to whether economic law is beginning to embed the market system as a quasi-constitutional element of European democracies. It therefore offers generic conclusions about the nature of economic regulation. The implications of this for companies and their compliance obligations will form part of the conclusions.

Moral regulation of water pollution: The case of Finland from the 1960's till 2000

Marja Ylönen (Dept. of Social Sciences and Phil., University of Jyväskylä)

Moral regulation of water pollution is part of the study concerning the ethos of social control of pollution crimes in Finland from the 1960s till 2000. The regulatory field of pollution and its boarders set preconditions for possibilities to perceive pollution as deviant and as social harm. The field of moral regulation of water pollution was taking shape in the 1960s. At that time public concern over water pollution was increased and demands for more efficient water protection were expressed. Despite the positive atmosphere and some institutional arrangements which contributed to protection, there were other social factors that slowed down the favourable trend.

Moral regulation of water pollution is approached from the perspective of sociology of knowledge. In the paper cultural cognitive factors, such as justifications and value preferences, through which a certain kind of social control of pollution has become "objective" reality are examined. What kinds of topics were relevant in the regulatory field of pollution? How were pollution and regulation justified? What kinds of hierarchies were formed between experts in the field and how did these hierarchies affect the way the pollution harm was conceived? What kinds of interests affected moral regulation? The analysis is based on both the discourse analysis concerning production of meanings and the extra discursive analysis concerning the institutional setting of moral regulation. The ethos of moral regulation and transformations in it are outlined in the analysis. The data consist of committee reports and special water issue journal articles from the last four decades.

Will We Ever Know What is Out There? – Measuring Compliance

Vibeke Lehmann Nielsen (Political Science, University of Aarhus, Denmark) &
Christine Parker (Law School, University of Melbourne)

One of the main challenges in much empirical study of regulation is to measure the level of compliance with the law. Measuring an individual's or an organization's compliance with the law, however, is always difficult. The two main sets of uncertainty in interpreting and relying on measures of compliance are: Firstly, there is a problem with collecting accurate information about the level of violations of the law committed by a person or an organization. This is a problem because the relevant information has not, and/or cannot, be collected. Secondly, given that "actual compliance" may be impossible to measure directly (because of the first set of problems), the problem is to establish what link, if any there is between "actual compliance" and other measures that we hypothesize are related to actual compliance and that we might be able to use as proxies for actual compliance. This paper critically analyses the strengths and weaknesses of different ways of measuring compliance by reference to the different conceptualizations of compliance in the literature and two sets of data collected by the authors.

Corporate Governance and the Transformation of the Electricity Sector in England and Spain: The Interaction between National Institutions and Regulatory Choices

Rocío Valdivielso del Real (University of London) **& Michel Goyer** (University of Warwick)

Privatisation, liberalisation and deregulation have become major forces shaping societies and economies the world over. These forces have brought along major changes in the ownership and structure of utility industries. The central question of this paper focuses on the impact of these developments on the transformation of the industrial profile of the electricity sector in Britain and Spain. We analyse the impact associated with the national institutions of corporate governance in the two countries – ownership structure, corporate law and voting rights, and takeover regulation. We demonstrate that differences between England and Spain on these three dimensions largely account for the divergence in the transformation of the profile of the electricity sector in the two countries – reduction in the number of players in England through foreign takeovers; building of national champions in Spain through government-sponsored mergers. However, the importance of national-based institutions in accounting for the transformation of the industrial profile of the electricity sector in England and Spain should not be interpreted as a rejection of sector-specific patterns of regulation. We provide two additional contributions in this paper. First, we show how national-based explanations such as those presented in the Varieties of Capitalism (VoC) literature do not capture the origins and political foundations of institutional frameworks of the two countries. Second, we argue that the impact of the institutions of corporate governance is mediated

by their interaction with the wider institutional framework in which they are embedded. In particular, it is within their interaction with national regulatory policies that the institutions of corporate governance matter, not by themselves. The importance of the national institutions of corporate governance is themselves the result of regulatory choices made by policy-makers.

European Merger Control Regulation, When Decision-Making is Policy-Making

Nathalie Aubry (Aberdeen Business School, The Robert Gordon University)

This paper is part of an on-going European comparative study on actors involvement in the development of European Merger Control Regulation. Following pilot interviews of around 30 actors interacting with the Commission at various points of the development of the merger control regime – both historically and substantially, I developed a 'stagist' model to account for the regulation. Each stage feeds into each other and the whole policy-making can only be understood by previous decisions – decision-making at different institutional levels is policy-making. For instance the 2004 reform package derives directly from Commission decisions made between 1999 and 2001, and cases subsequently brought to the Court (Airtours/First Choice, Schneider/Legrand, Tetra/Laval). This can be explained by both a preferred approach at European level and the original status of merger regulation.

Indeed the European Union enjoys more powers in the sphere of regulation than in other public policy forms; it is more constrained to use other modes of public policy and it is likely to remain so. Moreover the institutional setting, notably the prerogatives of both the European Commission and the European Court of Justice in competition matters, fostered the development of the existing regulatory policy instruments in the process of trans-national regulation.

The Community's competition law system, on the other hand, has always been considered as 'special' (Gerber 1994). Interestingly the Treaty of Rome provided no provision regarding mergers – when the ECSC had at its disposal Article 66. The addition of the merger control regulation (MCR) to the European Commission's competition policy armoury is therefore recent. Yet, coexisting with national merger regimes, the EMCR is dependent upon merger cases brought to its attention. New economic concepts – such as collective dominance – are developed as cases come along. As a consequence the development of merger regulation resembles that of a learning curve for the Commission.

This paper is still at an exploratory stage. The research project from which it springs is still very much work-in-progress. Yet, there is enough material to fuel an interesting debate at the ECPR/CRI conference. I expect that other disciplines may have found other interesting ways to explain the development of merger control regulation.

Delegation Beyond the State: The New Approach Standardization as a Case of Efficient Delegation?

Isabelle Bédoyan (Department of Political Science, Vrije Universiteit Brussel)

The need for expertise and information, as well as the aspiration to more efficiency are some of the most important reasons for delegation. These reasons were also the incentive for the development of a specific delegation instrument at the EU-level: the New Approach standardization.

Standardization is in essence a private effort to realize voluntary standards. This activity is performed by standardization bodies on international, European and national level. At the European level standardization activities have been integrated in the policy cycle through the introduction of the New Approach directives. These directives combine essential legal requirements with the development of technical rules mandated to standardization bodies. The formulation of technical rules is thus delegated to private bodies.

In the early days this method was mostly used to harmonize safety requirement within the European market. It provided the expertise and information that was needed and resulted in an efficient policy that couldn't possibly been reached by classic regulation.

However; although the New Approach standardization has proven to be an efficient tool for achieving harmonized safety requirements, serious issues remain concerning democratic control over the standardization activities and balanced representation of public interests within the standardization bodies. These issues become increasingly crucial as the New Approach standardization spreads to new policy areas. Currently, it has already been introduced in the environmental policy through the Packaging and packaging waste directive and suggested in a recent policy proposal from DG Environment called "Integrated Product Policy".

This paper will analyze the control possibilities of public authorities on the standardization bodies using the Principal Agent theory: clarify the relationship between the Commission, (the principal) and the standardization bodies (the agent). The issue of balanced representation in the New Approach process will be cleared out by an analysis of the procedures within the European standardization bodies (CEN, CENELEC and ETSI). Both control and representation are crucial to achieve an efficient and legitimate policy.

Initiatives from public authorities to deal with the imperfections of the delegation exercise will be highlighted and the issues raised above will be illustrated through the case study of the Packaging and packaging waste directive.

Regulating the European Corporate Economy

Shawn Donnelly (Political Science Department, University of Bremen)

This paper outlines the development of new regulatory regimes in the European Union to handle the pan-European trading and regulation of trading in corporate securities between 2001 and 2005, and the parallel build-up of regulatory states at the national level to manage the new responsibilities of the member states. The development of policy regimes greatly facilitates the work of the European Union in passing future regulation. I speak of policy regimes because each designates the key participants and coordinates their activity in different ways.

Emergent Regulatory Governance in India. Comparative Case Studies of Electricity Regulation

Navroz K. Dubash (Centre for the Study of Law & Governance, Jawaharlal Nehru University)

This paper maps out the contours of an emergent politics of regulation in India by looking at the case of electricity regulation in two states. Electricity regulation was introduced through the intervention of donor agencies as part of a larger package of reforms. Following two faltering efforts at privatization, regulation has morphed from a means of signalling credibility to investors to being an institutional check on state authority, even under continued state ownership of utilities. The paper describes this national political context for the introduction of electricity regulation before considering two detailed case studies in the states of Andhra Pradesh and Delhi. We draw on Hancher and Moran's device of "regulatory space" to understand the forces that shape the structure and functioning of regulation. For each case, we examine the political context for introduction of regulation, the factors shaping the regulator's internal institutional form, regulatory practice with attention to interaction between regulator, state and utility, and the potential for new forms of regulatory governance. The paper highlights the extent to which regulation has been re-absorbed into the larger political and bureaucratic process, largely contrary to the hopes of its designers. However, the cases also show how procedures for transparency and participation are being evoked and productively used by a range of stakeholders. We discuss the implications of these developments for regulatory legitimacy and effectiveness, and the emergence of regulators as new embryonic democratic spaces. The paper concludes with some broader themes from the India case of relevance to the empirical study of regulation in other developing countries.

The Fifth Age of Central Banking in the Global Economy

Martin Marcussen (Copenhagen University)

The paper presents scattered evidence that global central banking is heading towards a qualitatively and quantitatively new age: one characterized by scientization, horizontal bureaucratic extension, committee decision-making, transparency and outcome performance. These developments resonate well with Max Weber's concept of rationalization and they are expected to impact on how central banks engage in different modes of governance in transnational regulation, on how knowledge is being produced and political accountability transformed. In general, the case of central bank scientization may be an early indicator of more general trends in global governance: the increased importance of normative, cognitive and imaginary governance, the blurring border between science and politics, and the objectification of power structures.

Regulation for Enterprise? Recent Reforms and the Implications for Risk Regulation in Smaller Businesses

Ian Vickers (Centre for Enterprise and Economic Development Research, Business School, Middlesex University)

The drive to reduce the burden of compliance costs on businesses has recently been reinvigorated in the UK by the publication of the report by Philip Hampton commissioned by the Treasury (*Reducing administrative burdens: effective inspection and enforcement*, HM Treasury, 2005). This has recommended the better targeting of inspection and enforcement activity in order that resources can be released to support alternative measures, such as improved advice and education for smaller enterprises in particular; the government has subsequently announced that these recommendations are to be adopted in full.

Small firms are known to experience particular difficulties in complying with regulations. At the same time, how small firms respond to regulation can vary considerably, according to their particular characteristics (i.e. the awareness and motivation of owner-managers, the capabilities and 'culture' of enterprises) and their operational contexts (i.e. nature of product market and supply chain influences). Although a number of studies on workplace health and safety appear to confirm that small firms are most responsive to direct contact techniques, including inspections, it has been suggested that there is, as yet, insufficient evidence to draw conclusions as to the most effective mix of measures for securing compliance.

The paper draws on secondary evidence to explore the policy dynamics behind 'better regulation' and the changes recommended by Hampton, and the likely feasibility of reducing the

burden of regulation on enterprises while at the same time maintaining or improving regulatory outcomes.

Convergence and Divergence in EU Policies for Regulatory Quality

Fabrizio De Francesco, **Claudio M. Radaelli** & **Vera E. Troeger** (University of Exeter)

Policies for enhancing regulatory quality, also known as 'better regulation' initiatives have spread throughout the member states of the European Union (EU) and have become a priority of the EU's Lisbon agenda for competitiveness. Although several commitments have been made by governments and EU institutions, the question arises whether actual policy choices converge or not. This paper draws on an original dataset on measures of regulatory quality collected in 2004 via a postal survey of directors of better regulation programmes. We first show how the preferences of governments and the policy instruments (such as targets and indicators) vary across the EU. We then analyze the impact of a set of independent variables including macro-economic indicators, public sector measures, timing of the implementation of regulatory impact assessment measures, and governments' capacity to deliver on high quality regulation on the form and quality of regulatory policies in EU member states. In addition, we examine whether the chosen regulatory policies in the European countries converge, diverge or maintains a certain level of diversity.

Governance of the European Patent System - between Self-regulation and Legislative Governance: The case of the EU Biopatent Directive

Ingrid Schneider (University of Hamburg)

For many decades, the patent system remained largely self-regulated by interaction between applicants and patent granting offices (practice), by lawyers as an epistemic community, and by courts. In the European Union, the failed Community Patent Convention meant, that a double structure had come into existence: Patents were regulated by the 1973 European Patent Convention (EPC), governed by the European Patent Organization (EPO) and executed by the European Patent Office (EPO). Despite the lack of direct legislative powers, the European Commission aimed at preventive harmonization in the new biotechnological area. The contentious EU biopatent directive (98/44/EG) led to protracted negotiation processes at the EU (1988-1998) and the national level concerning directive's implementation (1999-2006).
I will discuss some effects of the EU biopatent directive on the European patent system:
- Has legislative governance by the EU cast the "shadow of hierarchy" upon the self-regulatory structure of the EPO patent system? Did agenda setting at the EU level just ratify the rules

developed at the EPO level or did the legislative outcome make a difference? How was EU legislation "transposed" to the EPO system?
- The EPO is a supranational agency at the public-private divide which enjoys a high degree of autonomy, combining executive (patent examination), jurisdictional (boards of appeal), and even some tacit legislative powers. This structure raises questions about division of power, transparency, accountability, and democratic control.
- Caused by endogenous and exogenous factors, the EPO patent system currently seems to be in crisis, articulated i.a. in claims about inefficiency, decreased patent quality, capture by the clients, "anti-commons" effects, and political contestation of the legitimacy of certain patent granting practices (concerning subject matter and scope). What is EPO's response, did external challenges result in internal reflexivization and proceduralization?
- Did politicization and vocal contestation of biopatents in the public sphere impact the self-regulatory structure of the patent system? How did the emergence of new actors - apart from economic competitors - in opposition proceedings influence the decision-making processes?
- Can the biopatent directive be regarded as a step towards a new, reflexive governance structure of the European patent system?

Open Source + Software Patents = Innovation? Understanding software patent policy's effects on open source innovation

Marcus M. Dapp (Center for Comparative and International Studies, Federal Institute of Technology (ETH) Zurich)

In this paper, we aim to offer a first consistent theory that combines two phenomena – Free Libre Open Source Software (FLOSS) and software patents – into a common model to draw attention to a gap in the existing literature. Our research is located at the intersection of two phenomena that have been receiving growing attention recently. Free Libre Open Source Software (FLOSS) is gaining popularity among governments, companies, and individuals. FLOSS (e.g., the Linux system or the FireFox browser) can be seen as a public good because through unorthodox copyright licenses, everybody is free to copy, modify and share such programs. Software patentability is giving rise to heated debates. The rejection of a related EU directive led to different policies in the U.S. and the EU, affecting an important business sector. Yet, we know little about software patents, their functioning and contribution to software evolution. So far, FLOSS literature has been investigating developer motivation and organization and the »copyleft« mechanism to explain decentral modes of production. The small body of literature on software patents has been focusing on proprietary software. Yet, the specific issue of software patenting in the FLOSS context has not been addressed so far.

The question we raise is whether and how software patent policy affects the productiveness of developers and thus the evolution of FLOSS projects. Aiming for a theory proposition, we build on recent models of open, evolutionary, and private collective innovation as well as peer production. Starting from established grounds in patent theory, we focus on underlying assumptions about incentives and ask to what extent they are fulfilled in the FLOSS paradigm. Finally, we conclude by drafting a theoretical framework and making some suggestions for theory testing and further research.

The Regulatory State between Mental Models, Political Entrepreneurs and Electoral Capita: The Case of the Israeli State economy arrangement law

Assaf Meydani (School of Government and Society, The Academic College of Tel-Aviv Yafo)

Israel, ever since its establishment, has been characterized by a large extent of centralization and public supervision of private activity, in almost any era of public life. Since the 80's of the 20'Th century, Israel faced a structural reform with the emphasis on creating regulatory agencies along with a functional reform expressed in privatization and outsourcing means, and a slow adoption of new public management methods. Those changes placed Israel among many countries who adopt patterns of what is known most as the rise of the regulatory state. The literature focused on the explanatory variables of those reforms as well as on the dynamics in which they evolved and the results of those structural reforms. Regarding the Israeli case the literature emphasized several variables mainly the rise of a neo-liberal ethos and the abandoning of a former collective ethos. Furthermore the literature emphasized the global influence of international events and dynamics which penetrate the local sphere and contributed to the evaluation of a neo liberal ethos Along with that the literature dealt with powers of several actors motivating this changes their scope and ramifications. With regard to that, a special emphasis was drawn to societal demands for more and more regulation driven either by break of trust or decrease in ability and tolerance to risk.

Regulating Life, Regulating Death: The Case of Israel's 'Health Basket

Guy I. Seidman (The Interdisciplinary Centre, Hertzelia, Israel)

Most nations face the same tough problems in healthcare regulation - searching for a way to provide good yet affordable medical treatment to the greatest number of people. Israel is no exception. This paper introduces the general themes, and then examines Israel's healthcare system and two special features of it: an official committee charged with the power to expand basic healthcare services annually; a policy decision to invest state funds heavily in fertility treatments.

Between Regulation and Dispute resolution -- the Role of the Ombudsman in Regulatory Regimes

Sharon Gilad (London School of Economics)

The paper analyses the role of the ombudsman institution in the regulation of private firms. It predicts a cooperative relationship between ombudsmen and firms, in as much as the former assume a narrow role of confidential individual dispute resolution mechanisms, rather than rectification of systemic problems. In contrast to this expectation, the case study of the UK Financial Ombudsman Service's (FOS) interaction with retail financial firms manifests an adversarial relationship. I suggest that financial firms' conflict with the ombudsman resulted from the latter's inability to control the use of its individual decisions by other actors in the regulatory regime. Firms faced the risk that their agreement to redress an individual complainant will be exploited by the regulator, and even more so by the media, in order to compel them to compensate all other consumers in similar position. Consequently, firms were in a paradoxical position, which led them to either apply individual ombudsman decisions to all similar complaints, beyond their legal obligation, or to fight each and every case. To this extent, while the ombudsman declared and perceived its role in terms of individual dispute resolution, its decisions had significant unintended regulatory impact. At the same time, by allowing persistent consumers to pursue individual complaints with the FOS, the regulatory agency - the Financial Services Authority - could resist consumer demand for direct regulatory intervention. Thereby, it shifted the blame (and praise) for overburdening regulation to the FOS. The analysis is based upon a one year participant-observation at the FOS, including systematic sampling of complaint files and interviews with complaint handlers and other stakeholders.

Epistemic Communities, Relational Distance and the Two Logics of Delegation: Hormone Growth Promoters in the European Union

Claire A. Dunlop (Department of Politics, University of Exeter)

This paper deploys principal-agent analysis to interrogate the relationship between epistemic communities and the governments they advise. Decision-makers delegate power to agents with at least one of two goals in mind – efficiency and credibility – however; the delegation literature suggests that the successful delivery of them implies very different levels of principal control over their agent. For policy efficiency a close alignment between principal and agent would be expected. Whereas confidence that a policy is likely to continue in the long-term and is therefore credible requires that the agent remains aloof from the political whirl. This article is centrally concerned with the implications of an epistemic community's proximity to decision-makers for the advice they give and delegation goals they are able to satisfy. This is explored by comparing the

contributions made by two scientific working groups upon whom the European Commission relied in the formulation of policy on growth promoters.

These committees are conceptualized as two distinct types of epistemic community distinguished according to where they originate in relation to the policy process. It is postulated that the degree of 'relational distance' (Black, 1976 in Hood et al, 1999) between epistemic agents and their decision-making principals. Two main hypotheses are explored concerning the impact of relational distance upon the delivery of efficiency and policy credibility. First, 'governmental' epistemic communities, which have been deliberately selected and crafted by decision-makers, will offer more efficient delegations than their 'evolutionary' counterparts whose existence as collective entities pre-dates their entry to the policy arena. Second, 'evolutionary' epistemic agents' greater independence from decision-makers makes them better able to secure credibility for a policy than their 'governmental' colleagues.

The paper reports two key findings. The hypothesis on efficiency is confirmed. The control the principal was able to exert over the governmental epistemic community's composition and mandate set the limits of its research agenda and resulted in the close interpretative 'fit' and a delegation of optimal efficiency. The hypothesis on credibility, however, was not confirmed. Despite its high level of independence, the evolutionary epistemic community did not secure the confidence of the wider European audience. Indeed, the governmental community, though more susceptible to claims of political bias, secured a high level of confidence in its policy advice. The findings challenge the orthodox view of policy credibility as primarily a function of agent independence by suggesting that in issues where a social consensus exists policy credibility a function of the resonance of agent's advice with the wider social audience. The paper concludes with a discussion of the implications of these findings for the epistemic communities' research agenda and the delegation literature.

Profitability Measures and Competition Law

Paul A. Grout (University of Bristol) & **Anna Zalewska** (University of Bath)

The paper outlines various measures of profitability and considers what role they can play in competition law. We argue that profitability measures can provide a good answer to the wrong question and a much less good answer to the question we really want to answer. Using appropriate definitions of asset value it is possible to identify whether a firm earns more than the absolute minimum needed to cover cost and compensate for risk, i.e., whether profitability measures such as the internal rate of return and the accounting rate of return are above the cost of capital. However, both the empirical evidence we present and theory indicates that this does not

really help in most cases. Knowing that a firm is earning, say, half a percent more than the cost of capital is not really much help in almost all competition law cases. But we show that once the rate of return deviates from the cost of capital it becomes hard to measure. Using simple examples we show that shifts in cash flows that preserve the net present value of a project can have dramatic effects on profitability measures. Hence, it is hard to assess the quantity of the "excessive" return. Furthermore, this problem is likely to be far more prevalent today than in the past given the growth in outsourcing (since outsourcing has exactly this type of effect on cash flows). Despite such problems, we argue that the measurement of profit has a role to play in competition law but that the analysis is far more of an art form and far less of a simple statistical procedure.

The Inspection Function and Risk Communication within Regulatory Agencies

Paul Sanderson & **John Brady** (Anglia Ruskin University, Cambridge)

Notwithstanding attempts by some in public administration to draw a distinction between regulatory agencies and inspectorates, many of the former have a significant inspection function. The workforce employed on inspection duties within regulatory agencies can be characterized as either primarily technical, focused on expert knowledge of the sector, or primarily regulatory, sometimes supported by a small elite group of experts from within the sector. In turn some senior regulators consider regulation and inspection to be a normal part of professional practice requiring few specialist skills, whilst others consider the activity highly specialized and expect their inspectors to be well versed in regulatory practices. In support of their preference they often cite the complexity of the regulated industry or product and/or the associated risks, describing the nature of the inspection task as anything from educative to forensic. But do these differences matter and if so how? For example, do differences in the background and experience of a regulatory agency's junior inspectors produce differences in the way that risk is understood and communicated within the agency? What steps do agencies take to ensure a degree of uniformity in perceptions of risk amongst front-line staff? We address such questions by drawing on empirical research we carried out in the UK in 2005 in which we interviewed senior personnel from twenty regulatory bodies on their perceptions of the inspection process and its role within their agency.

Regulation in the US Telecommunication Sector and its Impact on Risk

Daniel Grote (University of Bristol**)**

From the 1980s onwards price-cap regulation replaced traditional rate-of-return regulation as regulatory instrument in almost all network sectors. According to the "new regulatory economics"

rate-of-return regulation sets low incentives for cost reductions and efficiency improvements, since the company could pass through any cost changes to customers but is not allowed to retain additional profits. Shifting risk from the customers to the company's stockowners, via a switch to price-cap regulation, should increase incentives and result in higher efficiency levels. However, the empirical literature on the impact of regulation on company performance shows quite mixed results (indicating increased, unchanged or even decreased incentives under price-cap regulation) and there are very few empirical studies addressing the risk-regulation relationship directly.

The US telecommunication sector is almost the only case where the regulatory instruments for private companies have been changed. Since each state in the USA can and does apply a different regulatory system for intrastate telephone calls, a huge number of regulatory changes took place, with quite a few states reverting to rate-of-return regulation after they had already switched to price-cap regulation. As all larger companies operate in a number of states, we are able to estimate the impact of regulation for each telecommunication company by weighting each state with the number of lines the company owns within this state.

This paper analyses the relationship between regulation and risk regarding their effect on incentives and discuss the strengths and weaknesses of the existing literature. We provide a detailed overview on the large number of regulatory changes that took place on state and federal level in the US local and long-distance telecommunication markets. Furthermore we also present empirical evidence on whether the shift from rate-of-return to price-cap regulation in the US telecommunication sector has indeed resulted in an increase of market risk.

Democratic Regulation Beyond the State. Deliberative Governance within the North American Great Lakes Regime

Andreas Klinke (School of Social Science and Public Policy, King's College London)

The regulation beyond the state is increasingly characterised by the disentanglement from traditional political institutions and the emergence of new horizontal and dialogue-oriented forms of regulation. Within the North American Great Lakes regime, a worldwide unique system of public deliberation of transnational regulation has been evolved. This raises challenging research question: Is the Great Lakes regime a model case, which allows drawing conclusion on institutional prerequisites and means how to "democratise" regulation beyond the state in similar issue areas. For this purpose the paper develops a comprehension of the new horizontal and dialogue-oriented modes of governance and a corresponding system of normative-analytical appraisal categories. A three-dimensional model of deliberative governance (input-legitimacy, throughput-proceduralism, output-effectiveness) will be developed, which serves as normative-

analytical benchmark in order to identify and to evaluate the potential of democratic regulation within the Great Lakes regime.

My long-term empirical study reveals that a network and multilevel system has been established consisting of a bilateral decision making body and expert advisory bodies, which organise and moderate six different public participation procedures on different political-institutional levels. The results of the expert and public participation within a two- years-working cycle are aggregated in biannual reports which are submitted to the governments of the USA and Canada.

Against the background of the theoretical-conceptual research on deliberative regulation and the empirical analysis of the Great Lakes regime, generalising conclusions can be drawn on the institutional and procedural design of deliberative regulation beyond the state in form of a loose coupling of decision making bodies, advisory bodies and public participation. For this purpose the merits and weaknesses of the Great Lake regime will be considered carefully and the normative thoughts reflected.

Regulation of Network Infrastructures in the Enlarged European Union – The Situation After Two Decades of Reform

Marc Tenbücken (University of Konstanz)

Over the past two decades the state has retreated from several of its core functions. The retreat of the state is especially visible in network infrastructures, e.g. telecommunications, postal services, electricity or railways. State owned infrastructure companies have been privatized, monopolistic markets were opened to competition and new regulatory institutions were established in order to ensure fair conditions for new market participants. Based on this development, the article analyzes whether the process of regulatory reform has indeed produced similar or even identical infrastructure regimes in the enlarged European Union (EU), as it is for instance postulated by the 'regulatory state hypothesis'. The analysis focuses on a comparison of the reform development and the outcomes in the 15 old member states (EU-15) and the eight new members from Central and Eastern Europe plus Bulgaria and Romania (CEEC-10). In the analysis, special focus is put on the Europeanization of regulatory policy-making in network infrastructures and on the transition process in the CEEC-10 since the early 1990s. On the basis of a new data set for the telecommunications and the electricity sector, the article evaluates to which extent the 25 countries have privatized state owned companies, how they have progressed in liberalizing their national markets and how independent newly established regulatory agencies are in ensuring fair competition. The goal is, first, to compare the reform outcomes in the two sectors for both group of countries and, second, to contrast the timing and scope of reform in the CEEC-10 with that in the

EU-15 in order to categorize the national regimes accordingly. Based on the results of this regime categorization we can identify those countries among the CEEC-10 which should be given further analytic attention. By analyzing national categories of reform as well as horizontal processes of diffusion and policy learning, the paper tries to find explanations for cross-sectoral and cross-country divergence among the CEEC-10.

A Tale of Two Federations: The Dynamics of Policy Reform in Canada and Germany

Burkard Eberlein (York University) & **Steffen Schneider** (University of Bremen)

This paper investigates the impact of internationalization pressures on institutional aspects of policy reform in two domains (labour market policy and electricity market regulation) in Canada and Germany, as two 'most different' systems, along both a public-private and a territorial axis (international/subnational). Canada's liberal market economy, interstate federalism and asymmetrical bilateral relationship with the U.S. under NAFTA contrasts with Germany's coordinated market economy, intrastate federalism and highly institutionalized EU regional integration context. The paper engages with the neo-institutionalist literature on path dependency and change. It confirms that institutions do mediate the pressures of internationalization but finds that institutional dynamics are more complex than is suggested by path dependency and punctuated equilibria approaches. Policy reforms result in hybrid institutional arrangements that combine layers of legacy with layers of cumulative change, as hypothesized in more re cent institutionalist thinking designed to overcome the juxtaposition of agency (rare, exogenously driven change) and structure (deterministic institutional paths).

Optimal Regulatory Instruments for a Self – Polluting Firm in the Presence of Water Pollution

Anandajit Goswami, Nilanjan Ghosh & **Souvik Bhattacharjya** (The Energy and Resources Institute (TERI))

The paper emphasizes of profit maximizing firms that produce output (with water being an important input in the production process), and generates a negative externality like pollution in water resources. Such quality degradation in the water input affects, inevitably, the production of firm in the forthcoming period. In order to capture this, the paper envisages the existence of two types of firms, namely, *myopic* and *visionary*. The myopic firm is one that maximises its profit function without considering the impacts for the future period. One the other hand, the visionary firm maximises its profits by considering the entire planning horizon of its existence. The paper argues that *better* decision in terms of resource use and profit is taken by the visionary firm, as

compared to the myopic firm. The paper has been attempted in the context of industries like textile, paper and pulp, which creates an adequate amount of water pollution using water as an essential input in the production process. Thus, the paper presents a theoretical framework for regulating the polluting behaviour of the firms in water polluting industries.

Innovationsystem at micro level: From public medical research to marketable production. The creation of the NorDiag Corporation

Mari Nilsen, Frank Halhjem, Thorvald Gran. (University of Bergen)

This research proposal paper reflects on the characteristics of innovation systems conducive to friendly and synergetic relations between public authorities, universities and corporations exploiting instrumentation developed in basic research in universities. It tries to develop a fruitful problem formulation through preliminary empirical information on one case, the formation of the commercial company NorDiag from basic and methodological knowledge developed in a medical research institute at the Haukeland Hospital in Bergen, Norway and the mediation of that formation through a local-regional innovation system in Bergen, at present with a non-profit commercial company, BTO as a key mediator. The paper suggests an analysis from three angles: a theory of public sector bureaucracy and the tension between a focus on rules and an interest in specific consequences of action in such bureaucracies, Hirschman's theory of loyalty, voice and exit as strategies of action in organisations and politics and thirdly, Chris Freeman's theory of non-standardised networks as a condition for efficient public support of innovative firms/organisations.

Convergence and Standardization in Telecommunications Regulation: Trajectories of Change in the Asian Regulatory State

Martin Painter (Department of Public & Social Administration, City University of Hong Kong)

What forces are shaping regulatory reform in East Asia? Among governments long characterized as 'statist' and 'interventionist', is there convergence on a new set of regulatory techniques and policies as a result of these forces? It is widely acknowledged that global pressures have created new constraints and boundaries for domestic selection and variety in the provision and regulation of telecommunications, an industry that defies national boundaries and, in its rapid technological development, imposes strong external pressures on policy makers. However, the political stakes are high and governments have come under strong domestic demands from both business and long-established bureaucratic interests to resist many of the pressures for change. The four case

study governments investigated here – Hong Kong, Malaysia, Singapore and Thailand – are chosen for the dissimilarities in their domestic economies and systems of government. As well, their telecommunications systems have evolved in quite different forms. Yet they have all liberalized their telecommunications systems using similar sets of regulatory instruments. This convergent process is only in part the product of conscious reform by political or bureaucratic leaders. It is also a product of self-reproducing standardization by industry insiders with strong transnational linkages. The regulatory state in Asia is the outcome of the insertion of these new administrative forms and practices into different national political and institutional contexts. The resulting adaptations and hybrids promise to create as many varieties of the regulatory state as there are different states, but the underlying similarities are inescapable.

Comparing the Chinese and German Capital Markets: Do Informal Institutions Jeopardize Formal Institutional Supremacy?

Shiu-Fai Wong (City University of Hong Kong)

While the Chinese and German governments have introduced widespread capital market reforms over the past fifteen years, the view that their capital markets are relatively 'underdeveloped' and/or 'risky' continues to be widely held. What has caused this? Answering this question from a strictly regulatory perspective (even including the cutting-edge soft and indirect regulations) is not the only, and not always the best, solution. For a wider perspective we also need to understand how informal institutions such as organisational arrangements shape the Chinese and German capital market models. This article assesses capital market development in the paradigmatic case of China and Germany, arguing that the building of a strong, healthy capital market requires not only government regulation but corresponding adjustment of informal institutions. This study indicates that, overall, weaker performance in respect of informal institutions, caused by 'smart' managers who play tricks in the spacious grey areas intersecting the unique corporate and political structure, undermines the institutional supremacy the two governments provide. An analysis of the textual components that threaten or damage the quality of their respective macroeconomic environments and public institutions follows.

The Effect of the Legal System and Empathy in Venture. Capital Contracting: Theory and Evidence.

Richard Fairchild (University of Bath) **& Yiyuan Mai** (Huazhong University of Science & Technology, Wuhan, Hubei, China).

We examine the relationship between a society's legal system, the strength of venture capital contracts, and venture performance. Particularly, we are interested in the questions: does the venture capital sector require a strong legal system in order to flourish, or can it survive based upon implicit relationships such as empathy? How does the strength of the legal system affect the optimality of tough or weak contracts? We develop a double-sided moral hazard model in which an entrepreneur and a venture capitalist both exert unobservable value-adding efforts in a venture. The venture capitalist can select a strong contract, containing a punishment threat for entrepreneurial poor performance, or a weak contract which contains no such threat. However, the ability to punish the entrepreneur depends on the effectiveness of the legal system. Furthermore, selection of the strong contract destroys trust and empathy between the parties, adversely affecting performance. A strong contract is optimal if the legal system is strong and empathy is low, while a weak contract is optimal if the legal system is weak and empathy is high. We discuss international policy implications, and present results from our survey of Chinese venture capitalists that supports our model.

Institutional Setting and the Quality of the Regulatory Policy: Evidence from Telecommunications and Banking sectors in Chile and Peru

Marc Satorras (Foundation for Human Resources Motivation, Barcelona) & **Marc Navarro Vicente** (Universitat Pompeu Fabra)

The paper aims to contribute to the debate about the relationship between institutional settings and regulatory policy results. In order to do so, we will develop a research design to evaluate the performance of the new institutional settings built up in the market-oriented regulatory reforms faced by Latin American countries in the last decades. More concretely, the paper focuses on the institutional reforms implemented, mainly specified in the creation of Independent Regulatory Agencies, have been as successful as expected in terms of policy results in the regulated sectors. Our approach departs from a descriptive identification of regulative policy results, both in quantitative and qualitative terms (through interviews with regulatory agencies and regulated actors) as the dependent variable. In addition, the independent variable will be configured as the institutional setting of the regulated sectors, both as an administrative structure with different setting and as a part of a policy network.

By studying regulatory reforms in this way we would like to contribute to the academic debate about the impact of both national factors and policy sector patterns in the shaping of a specific regulatory structure (what is known as the National Policy Approach and the Policy Sector Approach). But we want to go further by assuming that regulated sector is also important to understand why some Independent Regulatory Agencies are successful while others are not. Following the policy network approach we will know more about the environment where the policies are embedded and the different actors involved in the policy. Our research design will be tested empirically carrying out an in-depth analysis of the institutional designs in banking and telecommunications sectors in Chile and Peru.

Source Code and Ownership. Software Regulation in the US and the EU

Thomas R. Eimer (Fern Universität Hagen)

Overwhelming interests both in the US and the EU to protect intellectual property rights outside their economic spheres are obscuring fundamental divergences concerning the regulation of software innovations. While computer programs are increasingly protected by patent law in the US, copyright remains the dominant means of defending intellectual ownership in the EU. Thus, software innovations are commonly regarded as a genuine private property in the US, whereas the European perspective comprises private as well as public good aspects. Both in the EU and the US, conflicts arise between big software corporations and Open Source Software programmers, the latter propagating a not-for-profit perspective on software innovations.

Open Source supporters are deeply concerned with the risks of a genuine private property based regulation in the US. From their point of view, the incremental innovation process in source code writing tends to blocked by a constantly intensifying "patent thicket". Due to ambivalences in the ruling of the European Patent Office, US corporations increasingly achieve patent protection for their software programs in the EU. As European small and medium firms regularly lack patent titles, their innovation processes may be disturbed by US competitors. Consequently, the European Union's ambitious goal of becoming "the greatest knowledge based economy" is endangered by regulation deficiencies in one of the most important innovation sectors.

In my presentation, I will try to reveal causes for the divergences between the United States' and the European regulation approaches. I argue that different legal traditions and economical-political priorities, divergences between the constellation and power structure of central actors, as well as varying institutional access opportunities and decision-making processes must be considered the principal factors. A global convergence towards the US model seems

rather improbable, and persisting differences within the explaining factors suggest ongoing divergent developments in the US and the European innovation systems.

Regulatory Agencies, Institutional Design and Public Management: the Case of the Dominican Republic

Carles Ramió (Universitat Pompeu Fabra, Barcelona), **David Sancho** (Universitat Pompeu Fabra, Barcelona) & **Miquel Salvador Serna** (European University Institute, Florence).

The emergence of regulatory agencies in Latin America may be viewed as an opportunity to improve public management dynamics. As regulatory policies constitute a new realm of state activity, new formulas of public affairs management are required, especially in order to avoid the well-known problems of most of Latin America public administrations.

Much research has focused on key factors to explain the institutionalization of regulatory agencies, such as principal-agent dynamics or their autonomy in managing their budgets in an accountable way. The aim of this paper is to contribute to this debate through the analysis of the presence or absence of regulatory agencies in four regulatory policy areas (telecommunications, banking and finance, pensions and pharmaceuticals) in the case of the Dominican Republic.

The paper focuses on the institutional design of regulatory agencies in these four sectors, emphasizing the role of institutional models and entrepreneurs from established agencies in explaining the viability of the new agencies. The paper introduces the relation between public management design and the recognition of external and international actors relevant to the regulated sectors. In these senses, the improvements in public management developed by agencies constitute an additional factor that contributes to legitimizing their role in the regulatory network and in the relevant epistemic communities. In addition, from an institutional perspective, the paper studies a set of criteria to evaluate the capacity to regulate on an independent basis through variables such as the type of authority sector statute, the appointment methods and the statute of the regulators, the institutional mechanisms established to guarantee the transparency and the participation in the decisional process and the availability of resources.

Informing the EU legislator through impact assessments: what does it mean in practice?

Anne Meuwese (Department of Politics, Exeter)

The EU impact assessment (IA) procedure, established in 2002 by the European Commission, can be studied as a microcosm of EU governance and even as a discursive space for the development of constitutional norms. The way IA is used by the three Institutions in the EU co-decision procedure sheds light on thorny constitutional issues such as the institutional balance and

subsidiarity. From this perspective the recent strengthening of the inter-institutional dimension of IA through the Inter-Institutional Common Approach to Impact Assessment is analysed. This paper also presents some preliminary results from case studies on the use of IA by the European Parliament and Council Working Parties, aiming to unveil what it means in practice to "inform the legislator" through IA - one of the leading ideas behind EU IA. It will be argued that many of the problems with the IA procedure as it currently stands can be traced back directly to fundamental disagreement between the main actors on the nature of the EU regulatory process.

Political responsiveness and credibility in regulatory administration

Jørgen Grønnegård Christensen (University of Aarhus) & **Kutsal Yesilkagit** (University of Utrecht)

Regulatory administration in Denmark, the Netherlands, and Sweden has gone through frequent and dramatic changes since 1950. Reforms are neither restricted to economic regulation nor to the post-1980-reform period. The changes facilitate political control through either the parliamentary chain of delegation or collegiate boards, often with strong corporatist traits. However, change does not follow a universal pattern. Rather they build on organisational forms that are embedded in national administrative traditions. The analysis questions the validity of functionalist theories of regulatory reform while arguing for the empirical validity of the politics of structural choice theory. In parliamentary systems of the European type policy makers prefer organisational designs that maximise flexibility to delegation to independent regulators, but consistently within the confines of national administrative tradition.

Social Regulation and Social Policy in Latin America: a new convergence?.
The weakness of social regulation in Latin American social policy

Jacint Jordana (Universitat Pompeu Fabra and Institut Barcelona d'Estudis Internacionals)

Regulations can affect the markets, but they also can act on other significant activities, outside the markets –protecting citizen's rights and risks. Not all public regulations are oriented towards the market. However, empirical evidence based on the creation of regulatory agencies in different sectors shows that social regulation developments in Latin America have been very limited compared to European ones (Gilardi, Jordana, Levi-Faur 2006). We wonder about how to explain these differences, and raise the question of why social regulation remains so weak in Latin America. We aim to advance an answer to this question focusing on policy change in traditional social policy sectors (health, pensions, work, etc.) in recent decades. Examining some cases of regulatory reforms in such sectors, we consider both domestic contexts and the mimetic pressures

related to social regulation models from other countries and sectors. We examine the unbalanced use of economic regulation within social areas in many countries and argue that social regulation reaches still a lesser role in the region when we discard the introduction of economic regulation in many social sectors. Using a diffusion perspective, we also discuss under what conditions social regulation may disseminate among countries and sectors, and find that diffusion of economic regulation may also stimulate in some cases, paradoxically, the introduction of additional social regulations in any specific sector.

Independent economic regulation and the policy challenge of sustainable development

Ian Bartle (Centre for the study of Regulated Industries, School of Management, University of Bath) & **Peter Vass** (Centre for the study of Regulated Industries, School of Management, University of Bath)

In recent years in Britain one method for encouraging sustainable development in regulated network industries has been the imposition of a statutory duty on the economic regulators in the energy, water and rail sectors to have regard to sustainable development. This is of considerable importance for investment in sustainable infrastructures in Europe. Firstly because economic regulators play a central role in the assessment and approval of the investment plans of the regulated network industries; their interpretation of their statutory responsibilities and of what is necessary expenditure is crucial. Second, Britain has been a pioneer of economic regulation and its experience is important for infrastructure investment in other European countries.

The duty, however, presents a number of challenges for economic regulators. First, sustainable development is a vague concept and leaves considerable scope for interpretation. Guidance to the regulators is given by ministers but this is often general with considerable scope for interpretation. Second, regulators have limited powers and resources to pursue policies to further sustainable development. The key features of many policies used to pursue sustainability (eg emissions trading, renewables obligations) are specified by government. Economic regulators can play an important role in setting up policies and advising government, but their main powers are often limited to implementation. Third, within the modern regulatory state, it is questionable whether independent economic regulators should be given non-economic duties. Arguably it is the responsibility of other governmental organisations to pursue sustainable development and economic regulators should focus on economic regulation within parameters set by government. This problem is reflected in contradictions in the legal duties. Regulators have a primary economic duty (ie promotion of competition and regulation of monopoly) and other objectives such as sustainable development are secondary. However, the notion of sustainable development suggests

that its three pillars – economic, environmental and social – should at least be balanced, or possibly even a non-economic pillar should be prioritised.

Given these difficulties we ask and explore a number of questions. How have and how should the regulators respond to the duty? Can they change their activities to respond effectively and what should these activities be? What are the policy lessons and is it an appropriate way of encouraging the investment in sustainable infrastructure in regulated industries?

The research draws on interviews with representatives from a range of key governmental, regulatory, advisory bodies and industry players. We show that the economic regulators have changed their focus in recent year towards the integration of environmental and social objectives into their regulatory policies. However, a clear cause and effect link between the duty and changing action by the regulators is not evident; the duty appears to reinforce other pressures on the regulator but on its own is insufficient. The duty has some benefit, notably giving impetus and legitimacy to action on sustainable development, but we argue that more narrowly defined duties which clearly specify the sustainable development priorities for action and the constraints within which regulators act (eg carbon cap and trading systems) are more appropriate.

The Regulation and Politics of Trans-border Data flows

Andreas Busch (University of Oxford)

Contrary to initial hopes, the increased economic, social-cultural and political importance of cyberspace has led to substantial state regulation of it. Since nation states are still the dominant force here, the regulation of transborder data flows requires the cooperation of nation states which encounters many difficulties. These problems can be analysed along two dimensions: on the one hand, there are competing interests in the field of transborder data flows: economic interests centre on issues like cost-effectiveness; safety interests focus on the reduction of risk and the prevention of misuse; and civil liberty interests call for the upholding of privacy and freedom of information. On the other hand, national environments differ considerably, especially with respect to the values that inform political debate; the direction and mobilisation of interests; and the existence of institutions in relevant areas such as data protection.

This paper uses these two dimensions to analyse two illustrative cases: one is the "Safe Harbor" agreement between the U.S. and the EU that was meant to provide a framework for firms in the face of different standards of private sector data protection between the two areas; the other is the recent dispute between the U.S. and the EU about the transmission of airline passengers' personal data. The paper argues that these cases demonstrate that initial expectations for a "policy

transfer" of EU privacy standards to the U.S. did not materialise, and that differences in institutions and underlying values can largely account for this.

Regulatory Impact Analysis: Promise and Reality

Peter Carroll (University of Tasmania)

The Australian national government was one of the first OECD nations to adopt a process of RIA, in the shape of its regulatory impacts statement (RIS), process, adopted over twenty years ago, in 1985. Yet, despite over twenty years of development, in 2005 the Prime Minister felt compelled to establish the Regulation Taskforce on reducing the Regulatory Burden on Business. In its 2006 Report 'Rethinking Regulation', the Taskforce identified some '100 reforms to existing regulation', that were needed and another fifty to be investigated in further depth. It laid the blame for the sharp increase in the regulatory burden on an increasingly risk averse society and a 'regulation first, ask questions later', within government departments and agencies. At the very least the findings of the Report imply that the RIS process and the regulatory review system in which it was embedded had been a failure. The aim of this paper is to assess the development and role of the RIS process in order to identify the performance of that process, the environment within which it has operated and the compliance record of the departments and agencies subject to RIS. It argues that its performance can be explained by the varying levels of ministerial commitment to the process, an overly lengthy policy development process, variable degrees of commitment from departments and agencies, several of which did not integrate the needs of RIS with their standard policy development processes, the consistently poor definition of regulatory problems and objectives, inadequate consideration of options, inadequate cost/benefit assessments and inadequate consultation with stakeholders.

National Welfare States meet the European Regulatory State: The Politics of Retirement Pension Regulation

Markus Haverland (Leiden University)

The European-wide tendency to privatize old age pension provisions has moved this once unlikely are for European integration into the core of European regulatory policy-making. National redistributive welfare states meet the European regulatory state. Being sensitive to the peculiar decision making structure of the EU multi-level polity and the institutional self interests of supranational bodies, the paper draws on theories of international political economy (e.g. strength of business power) and the welfare state literature (constraining effects of policy legacies, electoral

competition) to establish the factors and mechanisms that shape EU regulatory policy making and non-policy making in this area. Using pattern matching, a multitude of rival obervable implications are derived from the various theories regarding political actors' preferences, features of the decision-making process, and the outcomes with regard to several regulatory issues. These issues revolve around (partly successful) initiatives to create a common market for pension funds and regulate their investment policies, to harmonize private pension tax regimes and to facilitate the free movement of workers.

Organizational Reputations and the Observability of Public Warnings in Ten Pharmaceutical Markets

Moshe Maor (Department of Political Science, The Hebrew University)

How does a regulator's reputation affect its willingness to make catastrophic errors public? To address this question, I draw on recent developments in institutional political science that view regulators as generally rational agents, and also as politically conscious organizations interested in protecting their reputations. I present a model in the policy domain of drug safety, which suggests that if a regulator is able and willing to develop a predominant basis of reputation, media coverage of the regulator's catastrophic errors will be a function of the regulator’s predominant basis of reputation: media coverage will be lowest when the regulator maximizes its reputation for expertise, and highest when it maximizes its reputation as a guarantor of public safety. Empirical tests of the model – in the form of an analysis of procedures regulating the issue of public warnings following safety-based drug withdrawals in the US, UK, Germany, Canada, South Africa, Australia, New Zealand, Ireland, Israel, and Switzerland between 1975-2004, combined with an analysis of the media coverage of these warnings – support the model's prediction.

Unintended Effects of a Burgeoning Control Industry

Frans van Waarden (Utrecht University)

Newspapers in many countries are filled with fraud stories. All these cases have in common that information-asymmetries are abused for personal profit. They add to a major social problem: trust relations are undercut or even destroyed, between customer and supplier, investor and company, government and citizen, politician and administrator. The results can be disastrous: loss of legitimacy of politics and public administration, hesitation to engage in economic transactions, diving stock prices, bankruptcies, unemployment. Even if there is no intention of deception, scandals over the quality of products, services, suppliers, and government increase feelings of risk, uncertainty and distrust. Is beef still to be trusted, after the BSE-scandal?

This problem has fuelled the development of what one could call a 'control industry'. Distrust fuels calls for controls. But even the controllers turned out to be untrustworthy – cf. the Andersen scandal. Thus controls are piled on top of controls. Leading to a veritable development of what one could call a veritable 'control' industry. A real army of public and private agencies that control, inspect, examine, monitor, supervise, check, verify, patrol, and test in the 'audit society' (Power 1997). Distrust and control have become booming business. I earlier work I have already tried to estimate the size of this industry, and its growth perspective. The present paper for Bath will focus on some of the unintended consequences of more controls, including by regulatory agencies: To what extent does it enhance internal organizational bureaucracy? I will argue that it increases bureaucracy, reduces efficiency, and does not reduce feelings of uncertainty, insecurity, and distrust.

Freer Markets, More Litigation?

Youri Hildebrand (Utrecht University) & **Frans van Waarden** (Utrecht University)

Over the last decades, many countries have implemented policy programs that aim at the withdrawal of the state from the market. Markets are liberalized, public service providers are privatized, and economic sectors are deregulated where possible. At the same time, many of these countries witnessed a legal explosion. The lawyer densities and litigation rates rose sky-high. Could there be a connection?

Our basic premise is that institutions of economic governance (states, courts, associations, hierarchies, networks, etc.) have been developed by society to reduce risk and uncertainty. They provide the stability within which firms conduct business. These mechanisms respond to economic change. If the institution of the state decreases withdraws, the market will search for alternative mechanisms to reduce risk and uncertainty. One of the solutions is to use the law for this purpose. Transactions are nailed up in thick contracts, legal specialists are hired to neutralize hostile claims, and rising disputes will be solved through formal dispute settlement by a third party rather than through more informal means. Is it true that liberalization and privatization lead to increasing litigation rates? And if this is true, what costs are associated with it? Does it offset the predicted efficiency gains of increased competition?

We claim that policies of privatization, liberalization and deregulation lead both to an increased number of conflicts, and to the fact that an increasing proportion of these conflicts ends up in the courtroom. We present evidence for these claims from the telecommunications and bus services in the United Kingdom and The Netherlands.

Regulation in the Age of Governance: Beyond Zero-Sum Narratives

David Levi-Faur (University of Haifa)

This paper deals with the changes in the governance of capitalism since the latter part of the 20th century. It aims to capture and characterize the changes in the ways capitalist activities and their externalities are govern and to shed some light on the causes and effects of these changes. The paper first start with some of the paradoxes of the current order that serve to pinpoint the boundaries of the current regulatory order that are of major interest. The main trust of the paper is that regulatory explosion is a critical and ever expanding element of the emerging global order and that the conventional wisdom, according to which we live in a neoliberal order and under neoliberal hegemony, is at least partly misleading. It presents the evidences for the explosion in both state and civil regulation and their multiple forms of interaction in shaping the basic characteristics of the current global order. On the basis of these evidences, it is asserted that the emerging order while not anti-market is more progressive and less neoliberal than is commonly assumed. Theories of regulation should deal with these aspects in order to offer a relevant theoretical account for regulatory development in the age of governance. To do so they have to move beyond their zero-sum narratives of the changing regulatory environment. The paper therefore suggests few principals for a 'positive sum' perspective on the relations between the private and the public, the global and the local and the statist and the civil.

The Global Diffusion of the Regulatory Agencies: Institutional Emulation and Channels of Contagion

Jacint Jordana (Pompeu Fabra),, **David Levi-Faur** (University of Haifa) & **Xavier Fernandez i Marin** (Pompeu Fabra),

The autonomous regulatory agency – once, a distinctive features of United States' exceptionalism and central banking – has recently become the 'appropriate model' of governance in capitalist economies. Autonomous regulatory agencies are now common across sectors, countries, and regions. Our dataset – covering 16 sectors, and 49 countries, over 82 years (1920-2002) – offers for a first time a general overview of the surge in the popularity of this institution over the last two decades and the variations in this process. Using Event History Analysis [EHA] and compound research design, we demonstrate the importance of institutional emulation and different channels of institutional transfer (sector-to-sector within country; country-to-country within sector; and country-to-country over all sectors). We assert the importance of institutional emulation to

complement the current explanations that focus on cultural, economic and political interdependencies. We employ a two-step analysis to better understand the process of diffusion, splitting the dataset by regions and areas of regulation in order understand the internal dynamic of the diffusion process. This provides not only a better assessment of the process but also suggests a new template for quantitative research design that is sensitive to the multiple channels of political action; to that fragmented whole, otherwise known as "the state" and, finally, to the role of transnational regulatory networks in global governance.

Electricity Sector Reform in Developing Countries: an Econometric Assessment of the Effects of Privatisation, Competition and Regulation

Yin-Fang Zhang, David Parker & **Colin Kirkpatrick** (Centre on Regulation and Competition, Institute for Development Policy and Management, University of Manchester)

Over the last two decades electricity sectors in both developed and developing countries have been subject to restructuring to introduce private capital and increase competition. This has been accompanied by the introduction of new regulatory regimes. Although the effects of such reforms in a number of the developed economies are now well documented, apart from a few case studies the experience of developing countries is much less well researched. This is important because privatisation, competition and the reform of state regulation are key themes of donor aid programmes, notably those of the World Bank.

This paper provides an econometric assessment of the effects of privatisation, competition and regulation on the performance of the electricity generation industry using panel data for 36 developing and transitional countries, over the period 1985 to 2003. The study identifies the impact of these reforms on generating capacity, electricity generated, labour productivity in the generating sector and capacity utilisation. The main conclusions are that on their own privatisation and regulation do not lead to obvious gains in economic performance, though there are some positive interaction effects. By contrast, introducing competition does seem to be effective in stimulating performance improvements.

Understanding Attitudes towards EU rules and Regulations in Multi-Level Governance Contexts: A social Identity Perspective

Frank Mols (University of Exeter)

Recent research into compliance with European Union (EU) regulation focuses on how alternative modes of EU governance lead to different 'behaviour rationalities' amongst civil-servants in 'national' bureaucracies (e.g. Knill and Lenschow, 2005). Such accounts conceive of 'Europeanization' as a top-down process involving socialisation and institutional adaptation. The

central argument of this article is that the willingness of street-level bureaucrats to comply with EU regulations is explained by the dynamics between relevant domestic subgroup identities. On the basis of a social identity approach (Tajfel and Turner, 1979), it is hypothesised that (a) negative perceptions of the relationship between one's region and nation-state lead to a tendency to defy the national stance on EU policy-implementation, and (b) that this overrides party-political considerations. Findings provide considerable support for the first hypothesis and partial support for the second and confirm that attitudes of regional civil-servants towards EU regulation are mediated by identity processes.

Governance After Delegation: The Rise of Networks of Regulatory Agencies

David Coen (University College London) & **Mark Thatcher** (London school of Economics)

The creation of the single market and the liberalisation of European utility sectors resulted in the rapid expansion of EU regulation and top down economic governance (Majone 1996). This trend was part of wider global phenomena, that saw states switch from economic interventionism to delegated national regulatory authorities (NRAs). (Radaelli 2004, Thatcher 2005, 2002b,c, Majone 1999). However, the rise of regulators and regulatory solutions has not followed a uniform path, either in timing or solutions (Coen and Heritier 2005, Thatcher 2004). For example, while there has been an unprecedented explosion in the delegation to independent regulator agencies (Thatcher 2002c, Levi-Faur 2004, Gilardi 2001), we also see the increased use of competition authorities (Wilks 2005), and the continued importance of ministries and existence of nationalised industries (Heritier 2001). Under such conditions, the EU has sought to co-ordinate member state regulatory implementation and harmonise regulatory governance. This paper seeks to assess the merits of various co-ordination proposals and the emergence of networks of NRAs. In so doing, and drawing on case studies from Telecoms and Financial securities, the paper will primarily assess how these new networks of regulators have altered the principal agent relationships between NRAs and states and NRAs and the EU institutions. In so doing, the project will also consider the degree to which these organisational forums facilitate the development of EU "best regulatory practice" and convergence in national regulatory design.

Regulation, Enforcement & Compliance In The Ten New EU Member States: The Case of Cyprus

George Stavri (The Stanford Institute, Cyprus)

From its inception the Republic of Cyprus adopted a quasi-statist model of economic governance which, admittedly, was the path pursued by newly independent countries and more so by small

economies that had to protect their nascent and struggling local sectors. This function allowed the protection of local industries and producers to the eventual detriment of consumers who were taxed with higher final prices by keeping out cheaper imports. In reality with we were living in a state of corporate monopolies in many different economic activities and products created and sustained by the state. As the rising level of economic development lifted all groups, i.e. producers and consumers internal reactions and costs were kept to a minimum. Eventually, in the 1990s though it became self evident that the ideal 'bubble' world created artificially could not be sustained much longer. When, finally with the full accession of Cyprus to the EU the doors of competition were broken through almost overnight, a new economic reality started to shape.

Suddenly, new matters had to be tackled; free trade and markets did not necessarily mean lack of protection of consumers and/or concentration of economic activity to the few was not condoned or allowed. A series of EU Directives and the Acquis had become the law of the land and the Cypriot state machinery had to be created and revamped to streamline its operations with that.

The nascent Commission for the Protection of Competition had to regulate, enforce the relevant rules and regulations and monitor compliance with these. This paper will focus on the problems encountered in a new EU member state, Cyprus and how these can be tackled substantively and conclusively.

Appendix: Daniel Carpenter's Workshop Program

Reputation & Regulation: ***Beyond Public and Private Interest Approaches***	***Offered by Dan Carpenter*** *Professor and Director of Graduate Studies Department of Government, Harvard University*

Workshop Aim/Rationale: (1) To discuss current research on the political economy of regulation with an application to U.S. pharmaceuticals; (2) To consider reputation- based theories of government behavior as a metaphor and model for understanding U.S. pharmaceutical regulation; (3) To discuss the application of reputation-based approaches to regulatory behavior in other settings; (4) To allow the participants to discuss the relevance of the argument to their own research.

Main puzzle: Why does the U.S. Food and Drug Administration [FDA] have such broad gatekeeping power over the pharmaceutical marketplace despite a quarter of century of regulatory reforms, and what explains its behavior in drug approval, relations with firms, post-marketing product surveillance and regulation, and other domains? Prof. Carpenter hypothesizes that organizational reputation is an animating force in FDA pharmaceutical regulation, that the FDA protects and enhances its reputation in ways that help to explain its behavior, and that FDA officials (in some ways strategically, in some ways not) project a different reputation to different audiences.

Format: At these sessions we will engage in a full and wide-ranging discussions. Only very little of the time will be set aside for Professor Carpenter to present these ideas. We will ask that workshop participants come to the sessions having critically read the relevant chapters, and be prepared to discuss the applicability (or non-applicability) of the concepts to their own research and/or other cases.

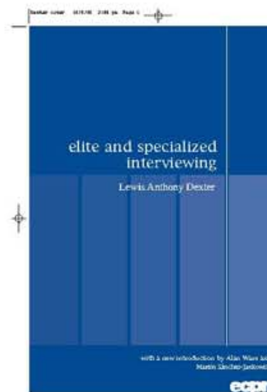
Workshop Program

Date: Saturday**,** September 9th (9.30-15.30**)**

Session I 9.30-11.00
Short Introduction
Disease Advocacy, Media Coverage and the Politics of U.S. Drug Approval

Session II 11.30-13.00
The Other Side of the Gate: Reputation and Post-Market Drug Regulation

Session III 14.00 - 15.30
FDA Pharmaceutical Regulation in a Global Context: Audiences, Comparisons and Dependencies



Elite and Specialized Interviewing

Lewis A. Dexter

Lewis Anthony Dexter (1915-1995) pioneered the use of specialized interviewing as a tool in the social sciences. He argued that interviewing persons who have specialized information about, or who have involvement with, any social or political processes is different from standardized interviewing. In "elite" interviewing the investigator must be willing to let the interviewee teach him what the problem, the question, or the situation is. He demonstrated that interviewing was a useful tool, but he also argued that it was not always the most appropriate method for revealing the information required. In *Elite and Specialized Interviewing* decades of his practical experience, of both how to interview and how to use interviews, was distilled into a readable, yet rigorously analytical, book. First published in 1969, it remains as good a guide to the subject as the 21st century researcher can find.

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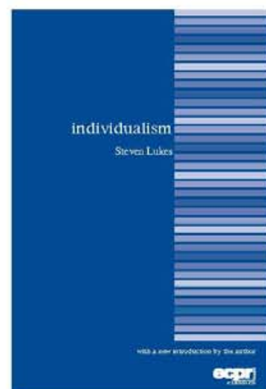

Individualism

Steven Lukes

In this classic text, re-printed by the ECPR Press, Steven Lukes discusses what 'individualism' has meant in various national traditions and across different provinces of thought, analyzing it into its component unit-ideas and doctrines. He further argues that it now plays a malign ideological role, for it has come to evoke a socially-constructed body of ideas whose illusory unity is deployed to suggest that redistributive policies are neither feasible nor desirable and to deny that there are institutional alternatives to the market.

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The Jean Blondel PhD Prize

In October 2003 the ECPR created its annual PhD prize for the best thesis in Politics (broadly conceived to include International Relations, Political Theory and Public Administration) awarded at a full ECPR member institution. The Prize has since been named after ECPR founding father, Jean Blondel.

The Jean Blondel PhD Prize links in with two other ECPR activities:

- a biennial Graduate Conference, which will be held for the first time at the University of Essex in September 2006 and;
- the ECPR Monographs series, which includes in its remit research monographs by new entrants to the profession based on outstanding doctoral dissertations.

The Prize is judged by a committee drawn from the editorial board of the ECPR CMonographs series, and will be chaired in 2007 by the series co-editor, Professor Vincent Hoffmann-Martinot, Sciences Po Bordeaux.

All ECPR Official Representatives are encouraged to put forward an outstanding student from their institution for the 2007 prize, the closing date for which is the 31st January 2007. A full set of guidelines can be found on the web site **www.ecprnet.org**.

Previous winners of the prize are:

2004

Kevin Casas Zamora (University of Oxford), for his thesis 'Paying for Democracy in Latin America: Political Finance and State Funding for Parties in Costa Rica and Uruguay'. The prize was presented to Dr Casas Zamora at the ECPR Joint Sessions of Workshops in Granada, during the reception to launch the ECPR Press and the 'Classics' and 'Monographs' Series. Dr Casas Zamora's thesis has since been developed into a book, and was published by the ECPR Press in 2005.

2005

Laura Morales Diez De Ulzurrun (Universidad de Murcia) for her thesis 'Institutions, Mobilisation, and Political Participation: Political Membership in Western Countries'. The Prize was presented at the 3rd ECPR General Conference in Budapest. A revised version of Dr Morales' thesis will be published by the ECPR Press in early 2007.

2006

Daniel Naurin (Göteborg University) for his thesis 'Dressed For Politics. Why Increasing Transparency In The European Union Will Not Make Lobbyists Behave Any Better Than They Already Do'. Dr Naurin will receive the prize from Jean Blondel at the ECPR Graduate Conference at the University of Essex in September, and a revised version of his thesis will be published in the ECPR Monographs series in late 2007.

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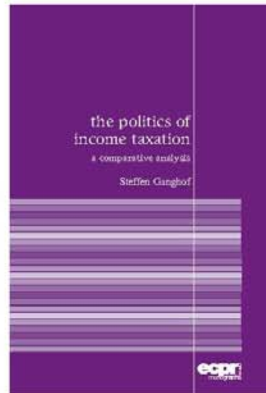

The Politics of Income Taxation

Steffen Ganghof

Marginal income tax rates in advanced industrial countries have fallen dramatically since the mid-1980s, but level and progressivity of income taxation continue to differ strongly across countries. This study offers a new perspective on both observations. It blends theoretical inquiry with focused quantitative analysis and in-depth investigation of seven countries: Germany, Australia and New Zealand as well as Denmark, Finland, Norway and Sweden. The study highlights the equity-efficiency tradeoffs that structure the politics of income taxation and analyses how income taxes are embedded in broader tax systems. It explains the limited but enduring importance of political parties and democratic institutions. Finally, the study paints a nuanced picture of the role of globalisation and thus also sheds lights on the pros and cons of tax coordination at the European and international levels.

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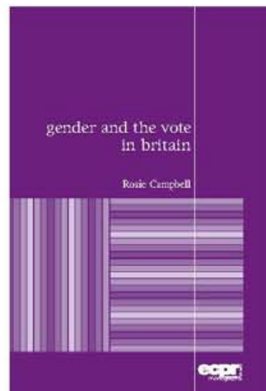

Gender and the Vote in Britain

Rosie Campbell

Gender and the Vote in Britain provides comprehensive analysis of the 1992-2005 British general elections and tests whether there were, in fact, sex differences in leadership evaluations, party vote and political attitudes. The interactions between sex, age, class, race, and education are examined, and gender effects are understood as 'tectonic plates' that will shift and change according to the specific context of a given election. Campbell argues that background or sociodemographic characteristics play an important role in electoral choice but that their impact is mitigated by other factors, such as issue salience. For example, gender may impact upon political attitudes, so that more women then men prioritise spending on health or education, but this will only translate into their voting behaviour if the political parties diverge on these issues.

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Yours,

John Braithwaite
Australian National University

Cary Coglianese
University of Pennsylvania

David Levi-Faur
University of Haifa

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